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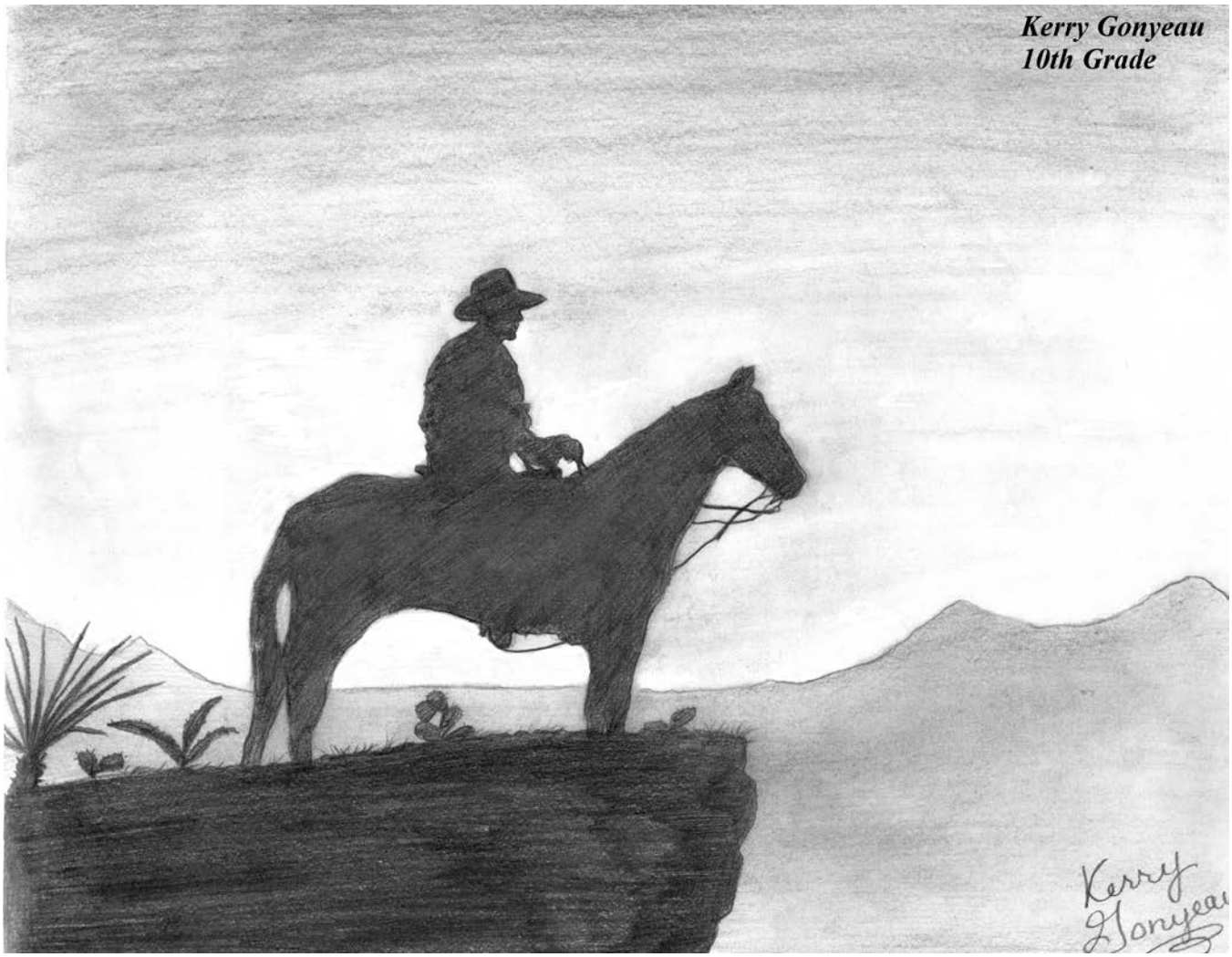

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Texas Department of Licensing and Regulation

Texas Lottery Commission

Texas State Board of Examiners of Marriage and Family Therapists

Public Utility Commission of Texas

Supreme Court of Texas

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Upper Rio Grande Workforce Development Board

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 19. PSYCHOLOGISTS' SERVICES

1 TAC §354.1281

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1281, concerning psychologists' services benefits and limitations.

Background and Justification

The Texas Medicaid program currently covers psychological counseling and services provided by a licensed psychologist or by a licensed psychological associate (LPA) if: the LPA's services are performed under the direct supervision of a licensed psychologist who is in the same office, building, or facility when and where the service is provided and is immediately available to furnish assistance and direction; and the LPA performing the service is an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

The proposed rule amendment adds provisionally licensed psychologists (PLP) as another type of provider who can perform psychological counseling and services under the direct supervision of a licensed psychologist. Under the rules of the Texas State Board of Examiners of Psychologists (TSBEP), an individual who is a licensed psychologist is an individual who holds a doctoral level license for the independent practice of psychology; a PLP is an individual who holds a doctoral level license to practice under the supervision of a licensed psychologist; and an LPA is an individual who holds a sub-doctoral license to practice psychology under the supervision of a licensed psychologist.

Under the current rule, if an individual who is an LPA completes his or her doctoral degree and becomes a PLP, the individual's services are not eligible for Medicaid reimbursement to the licensed psychologist until the individual becomes a licensed psychologist. Under the existing rule, a Medicaid recipient under the care of an LPA has to find a new provider after the LPA becomes a PLP. Therefore, HHSC proposes to amend the current rule to cover services provided by a PLP under the same conditions as those provided by an LPA. Services provided by the PLP will be reimbursed to the supervising psychologist or legal entity employing the supervising psychologist at fees determined by HHSC.

The amendment is also proposed to clarify and update terminology.

Section-by-Section Summary

In subsection (b)(1) and (2), the proposed amendment clarifies that a licensed psychologist and an LPA are licensed by the Texas State Board of Examiners of Psychologists.

In subsection (b)(3), the proposed amendment explains the conditions under which the Texas Medicaid program covers services provided by a PLP.

Throughout the proposed amendment, the term "Texas Medical Assistance Program" is revised to "Texas Medicaid program" to reflect the program's more common name.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be no fiscal impact to the state or local governments.

There are no anticipated economic costs to persons who are required to comply with the proposed rule as they will not be required to alter their current business practices in response to this proposal. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposal, because the amendment will result in neither revenue reductions nor cost increases to providers.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposal is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit as a result of enforcing the proposed amended rule will be to allow Medicaid recipients to continue receiving services from the same individual during the interim when the individual transitions from an LPA to a PLP to a licensed psychologist.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Peggy Atkins, Senior Policy Analyst, Operations Oversight, Medicaid/CHIP Division, Mail Code H390-91X, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by fax to (512) 249-3707; or by e-mail to peggy.atkins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1281. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC) or its designee, psychological counseling and services are covered.

(b) To qualify for reimbursement the services must be provided by a:

(1) Licensed psychologist who is licensed by the Texas State Board of Examiners of Psychologists (TSBEP), if [~~when the following conditions are met~~]:

(A) The services are within the psychologist's scope of practice, as defined by state law; and

(B) The services would be covered by the Texas Medicaid program [~~Medical Assistance Program~~] when they are provided by a licensed physician (MD or DO).

(2) Licensed psychological associate (LPA) who is licensed by TSBEP, if [~~when the following conditions are met~~]:

(A) The services are performed under the direct supervision of a licensed psychologist. The supervising psychologist must be in the same office, building, or facility when and where the service is provided and must be immediately available to furnish assistance and direction; and

(B) The LPA performing the service must be an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

(3) Provisionally licensed psychologist (PLP) who is licensed by TSBEP, if:

(A) The services are performed under the direct supervision of a licensed psychologist. The supervising psychologist must be in the same office, building, or facility when and where the service is provided and must be immediately available to furnish assistance and direction; and

(B) The PLP performing the service must be an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

(c) To be payable, the services must be reasonable and medically necessary as determined by HHSC.

(d) Covered services provided by an LPA or a PLP must be billed under the Texas Medicaid program [~~Medical Assistance Program~~] provider number of the supervising psychologist or the legal entity employing the supervising psychologist.

(e) Licensed psychologists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill the Texas Medicaid program [~~Medical Assistance Program~~] directly for psychologists' services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the program, payment may be made to the physician, hospital, or other provider (if approved for participation in the Texas Medicaid program [~~Medical Assistance Program~~]) who employs or reimburses the licensed psychologist. The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by the Texas Medicaid program [~~Medical Assistance Program~~] as appropriate for the services and provider(s) involved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301306
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8081

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8081, concerning Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Maternity Clinic Services, and Tuberculosis Clinic Services.

Background and Justification

The proposed rule is a result of provider concerns regarding Medicaid policies and reimbursement for provisionally licensed psychologists (PLPs). PLPs are one of three types of licensed

psychological professionals: licensed psychological associate (LPA); PLP; and licensed psychologist. An LPA is a professional with a master's degree that is primarily psychological in nature, while a PLP is a professional with a doctoral degree in psychology. Both an LPA and a PLP must pass requisite examinations, but a PLP must obtain a higher score to pass. To obtain licensure as a psychologist, an individual must be a licensed PLP, have two years of supervised experience, and pass his or her oral examination. *See* 22 Texas Administrative Code §§463.1, 463.10, 463.11 (Texas State Board of Examiners of Psychologists, Licensed Psychological Associate, Provisionally Licensed Psychologists, Licensed Psychologist).

Currently, HHSC reimburses for Medicaid services provided by an LPA supervised by a licensed psychologist, while HHSC does not reimburse for Medicaid services provided by a PLP who is supervised by a licensed psychologist. Thus, under the current rules, if an LPA completes a doctoral degree program in psychology and becomes a PLP providing services under the supervision of a licensed psychologist, the PLP is no longer eligible for Medicaid reimbursement. The PLP is again eligible for Medicaid reimbursement once he or she becomes a licensed psychologist. The amended rule will allow HHSC to reimburse for the Medicaid services provided by a PLP who is under the supervision of a licensed psychologist, thus remedying this anomalous gap in eligibility.

The rule proposes to reimburse services provided by PLPs at 70 percent of the Medicaid rate paid to licensed psychologists. This methodology is consistent with that for services provided by LPAs.

The addition of PLPs as eligible Medicaid providers is not expected to increase Medicaid utilization or cost because they are already providing services to clients as LPAs before completing their doctoral degree and passing the required examinations.

Section-by-Section Summary

The title of §355.8081 is revised to include PLP services.

Proposed §355.8081(a) adds Provisionally Licensed Psychologists as an eligible provider type and updates a reference to §355.8085. The proposal also clarifies that psychologists and licensed psychological associates are eligible provider types and renumbers the remaining paragraphs.

Proposed §355.8081(c) adds PLPs as payable Medicaid providers at 70 percent of the rate payable to a licensed psychologist.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amendment is in effect there will be no fiscal impact to state government or local governments.

Ms. Rymal does not anticipate that there will be any economic costs to persons who are required to comply with the amendment. There is no anticipated negative effect on local employment in geographic areas affected by the amendment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the amendment as there is no reduction to revenue or increase to costs of providers.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the expected public benefit is increased access to services for Medicaid beneficiaries as a result of adding provisionally licensed psychologists as payable Medicaid providers.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8081. Reimbursement Methodology [~~Payments~~] for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Provisionally Licensed Psychologists' Services, Maternity Clinic Services, and Tuberculosis Clinic Services.

(a) Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in §355.8085 of this title (relating to [~~Texas Medicaid~~] Reimbursement Methodology [~~(TMRM)~~] for Physicians and [~~Certain~~] Other Practitioners). Eligible providers include:

(1) Providers of Laboratory and X-ray Services;

(2) Providers of Radiation Therapy;

(3) Physical Therapists;

(4) Physicians;

(5) Podiatrists;

(6) Chiropractors;

(7) Optometrists;

(8) Dentists;

(9) Psychologists;

(10) Licensed Psychological Associates;

(11) Provisionally Licensed Psychologists;

(12) [~~(9)~~] Maternity clinics; and

(13) [~~(10)~~] Tuberculosis clinics.

(b) Reimbursement for ambulance services is described in §355.8600 of this title (relating to Reimbursement for Ambulance Services). Reimbursement for clinical laboratory services is described in §355.8610 of this title (relating to Reimbursement for Clinical Laboratory Services).

(c) Reimbursement for services provided by a licensed psychologist is described in §355.8085 of this title. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychological associate (LPA) or a provisionally licensed psychologist (PLP) [~~under the supervision of a licensed psychologist~~] is reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301307
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

The Texas Education Agency (TEA) proposes amendments to §101.3022 and §101.3041, concerning student assessment. Section 101.3022 addresses assessment and cumulative score requirements for Texas high school graduation programs. Section 101.3041 addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The proposed amendments would implement performance standards for the STAAR® Grades 3-8 assessments and the STAAR® Modified and STAAR® Alternate end-of-course (EOC) assessments. The proposed amendments would also clarify the English III reading and writing and Algebra II assessment requirements for the distinguished high school program.

In June 2009, the 81st Texas Legislature enacted House Bill (HB) 3, which made significant changes to the Texas student assessment program, including the requirement that the commissioner of education determine the various performance levels for assessments. To enact the requirements of HB 3 relating to performance levels, the commissioner adopted 19 TAC §101.3041, Performance Standards, effective August 21, 2012. At that time, the commissioner established the performance standards for the STAAR® EOC general education assessments and the Texas Assessment of Knowledge and Skills (TAKS) for Grade 10 and exit level.

The proposed amendment to 19 TAC §101.3041, Performance Standards, would implement the phase-in of performance standards for the STAAR® Grades 3-8 general education assessments, as well as the Grades 3-8 and EOC performance standards for the modified and alternate assessments.

Subsection (a) would be modified to establish the performance standards for the STAAR® Grades 3-8 general education, modified, and alternate assessments. The general education assessment performance standards would be added as Figure: 19 TAC §101.3041(a)(1). The modified assessment performance standards would be added as Figure: 19 TAC §101.3041(a)(2). The alternate assessment performance standards would be added as Figure: 19 TAC §101.3041(a)(3).

Subsection (b) would be modified to establish the performance standards for the STAAR® Modified and Alternate EOC assessments. The EOC modified assessment performance standards would be added as Figure: 19 TAC §101.3041(b)(2). The EOC alternate assessment performance standards would be added as Figure 19 TAC §101.3041(b)(3). The current figure for the EOC general education assessment performance standards, already adopted in rule, would be reorganized as Figure: 19 TAC §101.3041(b)(1). No changes would be made to the EOC general education assessment performance standards.

For the general education assessments in both English and Spanish, the STAAR® academic performance levels are: Level III: Advanced Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Unsatisfactory Academic Performance.

A student is considered to have passed a given STAAR® general education assessment if the student earns a score at least as high as the score indicating Level II: Satisfactory Academic Performance.

For the modified assessments, the STAAR® academic performance levels on a test that identify student performance are: Level III: Advanced Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Unsatisfactory Academic Performance.

For the alternate assessments, the STAAR® academic performance levels are: Level III: Accomplished Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Developing Academic Performance.

For the general education and modified assessments, a phase-in period will be implemented to provide school districts with time to adjust instruction, provide additional professional development,

and close knowledge gaps. A four-year, two-step phase-in for Level II will be in place for all STAAR® general education and modified EOC assessments as follows: Phase-in standard 1 for the Level II standard: the standard for students first testing in a grade or content area in 2012 and 2013; Phase-in standard 2 for the Level II standard: the standard for students first testing in a grade or content area in 2014 and 2015; and Recommended Level II standard: the standard for students first testing in a grade or content area in 2016 or thereafter.

For the Grades 3-8 STAAR® general education and modified assessments, the following four-year, two-step phase-in for Level II will be in place: Phase-in standard 1 for the Level II standard: the standard for all students testing in a grade in 2012 and 2013; Phase-in standard 2 for the Level II standard: the standard for all students testing in a grade in 2014 and 2015; and Recommended Level II standard: the standard for all students testing in a grade in 2016 or thereafter.

To specify the assessment and cumulative score requirements for the Texas diploma high school programs, the commissioner adopted 19 TAC §101.3022, Assessment and Cumulative Score Requirements for the Minimum, Recommended, and Distinguished Achievement High School Programs, effective May 29, 2012.

The proposed amendment to 19 TAC §101.3022 would add language to subsection (a)(2)(B) to clarify the Algebra II and English III assessment requirements for the distinguished high school program. As a result of a recent determination by the commissioner of education and the commissioner of higher education to set the college-readiness standard at the recommended performance level for the Algebra II and English III EOC assessments, the agency has revised the Algebra II and English III EOC assessment requirements for purposes of graduating on the distinguished high school program. To receive a Texas diploma on the distinguished high school program, a student is required to achieve the Recommended Level II performance standard on the Algebra II and English III reading and writing EOC assessments.

To receive a Texas diploma while taking STAAR® Modified or Alternate assessments, a student will need to meet the requirements of his or her individualized education program.

As required by the TEC, §39.0242, the performance standards will be reviewed at least once every three years. During standards review, additional impact and validity-study data will be examined, including data from longitudinal studies and studies evaluating the relationship between performance on the STAAR® assessments and performance in subsequent grades in the same content area. This ongoing review process will provide additional information to verify whether the established performance standards are appropriate or should be adjusted.

The proposed amendments would have no procedural and reporting implications beyond those that apply to all Texas students. The proposed amendments would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments.

Dr. Cloudt has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be the implementation of the performance standards for the STAAR® Grades 3-8 assessments and the STAAR® Modified and Alternate Grades 3-8 and EOC assessments. The proposed amendments would also clarify the assessment graduation requirements for the distinguished high school program. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 12, 2013, and ends May 13, 2013. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 12, 2013.

DIVISION 2. PARTICIPATION AND ASSESSMENT AND CUMULATIVE SCORE REQUIREMENTS FOR GRADUATION

19 TAC §101.3022

The amendment is proposed under the Texas Education Code, (TEC), §39.024, which authorizes the commissioner of education and the commissioner of higher education to establish student performance standards for the Algebra II and English III end-of-course assessment instruments indicating that students have attained college readiness; TEC, §39.0241, which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, including the performance standards for certain end-of-course assessment instruments and for Grades 3-8 assessment instruments. TEC, §39.0241(a-1), authorizes the commissioner of education, in collaboration with the commissioner of higher education, to determine the level of performance necessary to indicate college readiness, as defined by TEC, §39.024(a); and TEC, §39.0242, which authorizes the commissioner of education, in collaboration with the commissioner of higher education, to revise the standards of performance considered to be satisfactory. Based on data collected and studies performed periodically, the commissioner is authorized to increase the rigor of the performance standard established under TEC, §39.0241(a) as the commissioner determines necessary.

The amendment implements the Texas Education Code, §§39.024, 39.0241, and 39.0242.

§101.3022. Assessment and Cumulative Score Requirements for the Minimum, Recommended, and Distinguished Achievement High School Programs.

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student under:

(1) (No change.)

(2) the recommended or distinguished achievement high school program must take all 12 EOC assessments listed in the TEC, §39.023(c), except in cases as provided by §101.3021(e) of this title (relating to Required Participation in Academic Content Area Assessments and Course Grading), and meet the cumulative score requirement specified in subsection (b) of this section in each of the foundation content areas of English language arts, mathematics, science, and social studies.

(A) (No change.)

(B) To receive a diploma under the distinguished high school program, a student must achieve the [~~advanced~~] standard on the Algebra II and English III assessments determined by the commissioner of education and the commissioner of higher education under the TEC, §39.024. If a student earned high school credit for Algebra II or English III prior to enrollment in a Texas public school district and the credit has been accepted by a Texas public school district or a student completed Algebra II or English III for Texas high school credit prior to the 2011-2012 spring administration, this provision does not apply.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301289
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 475-1497

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DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The amendment is proposed under the Texas Education Code, (TEC), §39.024, which authorizes the commissioner of education and the commissioner of higher education to establish student performance standards for the Algebra II and English III end-of-course assessment instruments indicating that students have attained college readiness; TEC, §39.0241, which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, including the performance standards for certain end-of-course assessment instruments and for Grades 3-8 assessment instruments. TEC, §39.0241(a-1), authorizes the commissioner of education, in collaboration with the commissioner of higher education, to determine the level of performance necessary to indicate college readiness, as defined by TEC, §39.024(a); and TEC, §39.0242, which authorizes the commissioner of education, in collaboration with the commissioner of higher education, to revise the standards of performance considered to be satisfactory. Based on data collected and studies performed periodically, the commissioner is authorized to increase the rigor of the performance standard established under TEC, §39.0241(a) as the commissioner determines necessary.

The amendment implements the Texas Education Code, §§39.024, 39.0241, and 39.0242.

§101.3041. Performance Standards.

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects. The figures in this subsection identify the performance standards established by the commissioner for the Grades 3-8 general, modified, and alternate State of Texas Assessments of Academic Readiness (STAAR®) assessments.

(1) The figure in this paragraph identifies the Grades 3-8 STAAR® general education assessment performance standards.
Figure: 19 TAC §101.3041(a)(1)

(2) The figure in this paragraph identifies the Grades 3-8 STAAR® modified assessment performance standards.
Figure: 19 TAC §101.3041(a)(2)

(3) The figure in this paragraph identifies the Grades 3-8 STAAR® alternate assessment performance standards.
Figure: 19 TAC §101.3041(a)(3)

(b) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures [~~figure~~] in this subsection identify [~~identifies~~] the performance standards established by the commissioner for the STAAR® [~~State of Texas Assessments of Academic Readiness~~] end-of-course (EOC) general, modified, and alternate assessments. The standard in place when a student first takes an EOC assessment in a particular content area is the standard that will be maintained in that content area throughout the student's high school career.
[~~Figure: 19 TAC §101.3041(b)~~]

(1) The figure in this paragraph identifies the EOC general education assessment performance standards.
Figure: 19 TAC §101.3041(b)(1)

(2) The figure in this paragraph identifies the EOC modified assessment performance standards.
Figure: 19 TAC §101.3041(b)(2)

(3) The figure in this paragraph identifies the EOC alternate assessment performance standards.
Figure: 19 TAC §101.3041(b)(3)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301290
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.28

The Texas Medical Board (Board) proposes new §185.28, concerning Retired License.

The new rule provides that Physician Assistants may apply for a Retired License status under which they are not required to pay registration fees. Physician Assistants under official Retired License status are barred from engaging in clinical activities, but are allowed to re-apply for active practice.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be the promotion of administrative efficiency by eliminating the need of the Board to process the registrations of retired physicians.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication for state or local government as a result of enforcing the section as proposed. There will be no effect on individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Robert Blech, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Texas Physician Assistant Board to adopt rules to establish: licensing and other fees; license renewal dates; and procedures for disciplinary action.

No other statutes, articles or codes are affected by this proposal.

§185.28. Retired License.

The registration fee shall not apply to retired physician assistants.

(1) To become exempt from the registration fee due to retirement:

(A) the physician assistant's current license must not be under an investigation or order with the board or otherwise have a restricted license; and

(B) the physician assistant must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physician assistants whose licenses are on official retired status:

(A) the physician assistant must not engage in clinical activities or practice medicine in any state;

(B) the physician assistant may not prescribe or administer drugs to anyone, nor may the physician assistant possess a Drug Enforcement Agency or Texas controlled substances registration; and

(C) the physician assistant's license may not be endorsed to any other state.

(3) A physician assistant may return to active status by applying to the board, paying an application fee equal to an application fee for a physician assistant license, complying with the requirements for license renewal under the Act, demonstrating current certification by NCCPA, and submitting professional evaluations from each employment held before the license was placed on retired status, and complying with paragraph (4) of this section.

(4) The request of a physician assistant seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(A) current certification by the National Commission on the Certification of Physician Assistants;

(B) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(D) remedial education; and/or

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(5) The request of a physician assistant seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in paragraph (4)(A) - (E) of this section.

(6) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting physician assistant at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301308
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 305-7016

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.101, concerning definitions; §19.502, concerning transfer and discharge in Medicaid-certified facilities; §19.602, concerning incidents of abuse and neglect reportable to the Texas Department of Human Services (DHS) and law enforcement agencies by facilities; §19.1920, concerning operating policies and procedures; §19.1921, concerning general requirements for a nursing facility; §19.2006, concerning reporting incidents and complaints; §19.2008, concerning investigations of incidents and complaints; and §19.2310, concerning when a nursing facility ceases to participate, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement portions of Senate Bill (SB) 7, 82nd Legislature, First Called Session, 2011, and portions of the Patient Protection and Affordable Care Act (ACA) (Pub. L. 111-148), enacted on March 23, 2010. SB 7 amends Texas Health and Safety Code (THSC), Chapter 242, deleting Subchapter E and moving provisions related to reports of abuse, neglect, and exploitation, including definitions of abuse, neglect, and exploitation, to THSC Chapter 260A. Additionally, SB 7 requires a notice to be posted in a facility regarding reporting suspected abuse, neglect, and exploitation.

The ACA requires an administrator to provide written notice of facility closure or termination from Medicaid or Medicare to residents and DADS 60 days before the closure date or by the date set by Centers for Medicare and Medicaid Services (CMS) or DADS when CMS or DADS terminates the facility from Medicaid or Medicare. The notice must include a relocation plan approved by DADS.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 revises the definition of "abuse" to distinguish between state and federal definitions of abuse; adds a definition for "executive commissioner"; revises the definition of "exploitation" to reflect the state definition; revises the definition of "neglect" to distinguish between federal and state definitions; and revises the definition of "seclusion" to include "involuntary seclusion," to accurately reflect inclusion of the term in licensing standards and Medicaid and Medicare requirements.

The proposed amendment to §19.502 removes requirements for a facility that voluntarily withdraws from participation in Medicaid or Medicare. This information is now located in revised §19.2310. The proposed amendment adds a reference to §19.2310 for requirements when a facility closes, voluntarily withdraws from, or is terminated from Medicaid or Medicare and updates notice requirements for a resident with mental illness or with intellectual and developmental disabilities. Additionally, references to DADS and departments within DADS have been updated.

The proposed amendment to §19.602 updates the title of the section and agency references; adds mailing information for a written complaint; adds the requirement that a written complaint be filed within five days after a telephone report; corrects a statutory reference; and adds a Penal Code reference.

The proposed amendment to §19.1920 adds an ACA requirement that a facility must have policies regarding termination from Medicaid or Medicare. The amendment also updates agency references.

The proposed amendment to §19.1921 corrects statutory references; adds a reference to §19.2310, regarding requirements for a Medicaid and Medicare certified facility that ceases to operate; adds requirements for reporting abuse, neglect, or exploitation; and adds the requirement to post a sign regarding reporting abuse, neglect, or exploitation to DADS.

The proposed amendment to §19.2006 updates agency references.

The proposed amendment to §19.2008 updates agency and statutory references.

The proposed amendment to §19.2310 adds new ACA requirements for a nursing facility administrator in the event of: 1) a voluntary closure when the nursing facility no longer provides nursing facility services; and 2) a termination of a Medicaid provider agreement by the Centers for Medicare and Medicaid Services (CMS) or DADS. The amendment also adds the requirements that were moved from §19.502 regarding when a nursing facility voluntarily withdraws from Medicaid but continues to provide nursing facility services.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments revise the notice regarding abuse, neglect, and exploitation that a facility currently must post and DADS will provide the revised notice. Implementing the federal requirements regarding facility closure or Medicaid termination will have no impact because a facility should already have the information needed to meet the notice requirements. There is no cost to providers to implement the proposed amendments.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that greater advanced notice will be provided to nursing facility residents, allowing for more time to plan transfers in the event of a facility closure or termination of a provider agreement by CMS or DADS. Additionally, the amendments provide greater protection for nursing facility residents by specifying additional requirements for reporting abuse, neglect, and exploitation.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R17, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R17" in the subject line.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; Texas Health and Safety Code Chapter 260A; and Texas Human Resources Code, §161.021.

§19.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--[~~Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.~~]

(A) When used in a licensing standard or action, the term means: [~~"Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.~~]

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses) committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(B) When used in a Medicaid or Medicare requirement or action, the term means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish, including:

(i) [~~(B)~~] "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including[~~, but not limited to,~~] humiliation, harassment, threats of punishment, deprivation, and [~~or~~] intimidation;[~~.~~]

(ii) [~~(C)~~] "Physical abuse"--Physical action within the definition of "abuse," including[~~, but not limited to,~~] hitting, slapping, pinching, [~~and~~] kicking, and[~~. It also includes~~] controlling behavior through corporal punishment;[~~.~~]

(iii) [~~(D)~~] "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person, including [~~and includes but is not limited to~~] sexual harassment, sexual coercion, and [~~or~~] sexual assault; and[~~.~~]

(iv) [~~(E)~~] "Verbal abuse"--Any [~~The use of any~~] oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--This [~~Formerly,~~ ~~this~~] term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(37) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(38) [~~(37)~~] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident [~~caretaker~~] using the resources of the resident [~~an elderly or disabled person~~] for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(39) [~~(38)~~] Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(40) [~~(39)~~] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title [~~§19.2500 of this chapter~~] (relating to Preadmission Screening and Resident Review (PASRR)) [~~(PASARR))~~].

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(41) [~~(40)~~] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(42) [~~(41)~~] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(43) [~~(42)~~] Fiduciary agent--An individual who holds in trust another's monies.

(44) [~~(43)~~] Free choice--Unrestricted right to choose a qualified provider of services.

(45) [~~(44)~~] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(46) [~~(45)~~] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(47) [~~(46)~~] HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(48) [~~(47)~~] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(49) [~~(48)~~] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(50) [~~(49)~~] HIV--Human Immunodeficiency Virus.

(51) [~~(50)~~] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(52) [~~(51)~~] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(53) [~~(52)~~] Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(54) [~~(53)~~] Interdisciplinary care plan--See the definition of "comprehensive care plan."

(55) [~~(54)~~] IV--Intravenous.

(56) [~~(55)~~] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(57) [~~(56)~~] Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(58) [~~(57)~~] Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(59) [~~(58)~~] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(60) [~~(59)~~] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(61) [~~(60)~~] Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(62) [~~(61)~~] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(63) [~~(62)~~] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(64) [~~(63)~~] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(65) [~~(64)~~] Long-term care-regulatory--DADS [~~DADS'~~] Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(66) [~~(65)~~] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(67) [~~(66)~~] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(68) [~~(67)~~] MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(69) [~~(68)~~] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(70) [~~(69)~~] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(71) [~~(70)~~] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(72) [~~(71)~~] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(73) [~~(72)~~] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(74) [~~(73)~~] Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(75) [~~(74)~~] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(76) [~~(75)~~] Medical-social care plan--See Interdisciplinary Care Plan.

(77) [~~(76)~~] Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(78) [~~(77)~~] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(79) [~~(78)~~] Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(80) [~~(79)~~] Neglect--[~~A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.~~]

(A) When used in a licensure standard or action, the term means the failure to provide for oneself the goods or services, including medical services that are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(B) When used in a Medicaid or Medicare requirement or action, the term means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(81) [~~(80)~~] NHIC--This [~~Formerly, this~~] term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(82) [~~(81)~~] Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(83) [~~(82)~~] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(84) [~~(83)~~] Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(85) [~~(84)~~] Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(86) [~~(85)~~] Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(87) [~~(86)~~] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(88) [~~(87)~~] Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(89) [~~(88)~~] Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(90) [~~(89)~~] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(91) [~~(90)~~] Objectives--See definition of "goals."

(92) [~~(91)~~] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(93) [~~(92)~~] Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(94) [~~(93)~~] Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(95) [~~(94)~~] Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(96) [~~(95)~~] PASARR--Preadmission Screening and Resident Review.

(97) [~~(96)~~] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(98) [~~(97)~~] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(99) [~~(98)~~] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(100) [~~(99)~~] Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent [%] interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(101) [~~(100)~~] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(102) [~~(101)~~] Physical restraint--See Restraints (physical).

(103) [~~(102)~~] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(104) [~~(103)~~] Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(105) [~~(104)~~] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(106) [~~(105)~~] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(107) [~~(106)~~] Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(108) [~~(107)~~] PRN (pro re nata)--As needed.

(109) [~~(108)~~] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(110) [~~(109)~~] Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(111) [~~(110)~~] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(112) [~~(111)~~] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(113) [~~(112)~~] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS [~~DADS'~~] Regulatory Services Division.

(114) [~~(113)~~] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(115) [~~(114)~~] Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(116) [~~(115)~~] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(117) [~~(116)~~] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(118) [~~(117)~~] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(119) [~~(118)~~] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(120) [~~(119)~~] Resident--Any individual residing in a nursing facility.

(121) [~~(120)~~] Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(122) [~~(121)~~] Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(123) [~~(122)~~] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(124) [~~(123)~~] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(125) [~~(124)~~] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(126) [~~(125)~~] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(127) [~~(126)~~] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(128) [~~(127)~~] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(129) [~~(128)~~] Seclusion or Involuntary Seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from

other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care [~~See the definition of "involuntary seclusion" in paragraph (1)(A) of this section~~].

(130) [~~(129)~~] Secretary--Secretary of the U.S. Department of Health and Human Services.

(131) [~~(130)~~] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(132) [~~(131)~~] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(133) [~~(132)~~] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(134) [~~(133)~~] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(135) [~~(134)~~] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(136) [~~(135)~~] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(137) [~~(136)~~] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(138) [~~(137)~~] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(139) [~~(138)~~] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(140) [~~(139)~~] Supervision--General supervision, unless otherwise identified.

(141) [~~(140)~~] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(142) [~~(141)~~] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) [~~(142)~~] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(144) [~~(143)~~] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(145) [~~(144)~~] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(146) [~~(145)~~] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(147) [~~(146)~~] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(148) [~~(147)~~] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(149) [~~(148)~~] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(150) [~~(149)~~] Title XVIII--Medicare provisions of the Social Security Act.

(151) [~~(150)~~] Title XIX--Medicaid provisions of the Social Security Act.

(152) [~~(151)~~] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(153) [~~(152)~~] UAR--HHSC's Utilization and Assessment Review Section.

(154) [~~(153)~~] Uniform data set--See Resident Assessment Instrument (RAI).

(155) [~~(154)~~] Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(156) [~~(155)~~] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(157) [~~(156)~~] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing fa-

cility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(158) [~~(157)~~] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 438-4162

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SUBCHAPTER F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

40 TAC §19.502

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§19.502. Transfer and Discharge in Medicaid-certified Facilities.

(a) Definition. Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

(1) the transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(3) the safety of individuals in the facility is endangered;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

(6) the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge; or

(7) the facility ceases to operate as a nursing facility and no longer provides resident care. [~~or participate in the program which pays for the resident's care. See §19.2310 of this title (relating to Nursing Facility Ceases to Participate). If the facility voluntarily withdraws from participation in Medicaid, but continues to provide nursing facility services:~~]

[~~(A) the facility's voluntary withdrawal from Medicaid is not an acceptable basis for the transfer or discharge of residents who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to Medicaid assistance as of such day);~~]

[~~(B) for individuals who begin residence in the facility after the effective date of the withdrawal, the facility must provide notice orally and in a prominent manner in writing on a separate page of the admission agreement at the time the resident begins residence and document receipt in writing, signed by the individual, and separate from other documents signed by the individual of the following information:~~]

[~~*(i)* The facility is not participating in the Medicaid program with respect to these residents.~~]

[~~*(ii)* The facility may transfer or discharge these residents if they are unable to pay the charges of the facility, even though the resident may have become eligible for Medicaid nursing facility services.~~]

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1) - (5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (b)(4) of this section.

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language the resident understands [~~and manner they will understand~~];

(2) record the reasons in the resident's clinical record; [~~and~~]

(3) include in the notice the items described in subsection (f) of this section; and[.]

(4) comply with §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) when the facility voluntarily with-

draws from Medicaid or Medicare or is terminated from Medicaid or Medicare participation by DADS or the secretary.

(e) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection or in §19.2310 of this chapter, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge.

(3) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or

(E) a resident has not resided in the facility for 30 days.

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office Consumer Rights and Services section of DADS [~~LTC-R Customer Service Section of the Texas Department of Human Services (DHS)~~] to report its [~~their~~] intention to discharge; and

(B) submit to DADS the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement that the resident has the right to appeal the action as outlined in HHSC's [~~DHS's~~] Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DADS [~~DHS~~] office within 10 days;

(5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, DADS [~~Texas Department on Aging~~], and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412; and

(6) in the case of a resident with mental illness [~~or mental retardation~~], the address and phone number of the state mental health[~~/mental retardation~~] authority, which is Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78712-9347, 1-800-252-8154; or in the case of a resident with an intellectual or developmental disability, the authority for persons with intellectual and developmental disabilities, which is DADS Access and Intake Division, P.O. Box 14930, Austin, Texas 78714-9030, 1-800-458-9858, [~~Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, 1-800-252-8154;~~] and the phone number of the agency responsible for the protection and advocacy of persons with intellectual and developmental disabilities [~~mental illness or mental retardation and/or related conditions~~], which is: Disability Rights Texas [~~Advocacy Incorporated~~], 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, 1-800-252-9108.

(g) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(h) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(i) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 10 days to appeal. If the recipient appeals before the discharge date, he may remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to DADS [~~Long Term Care-~~]Regulatory Services Division for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4162

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SUBCHAPTER G. RESIDENT BEHAVIOR AND FACILITY PRACTICE

40 TAC §19.602

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; Texas Health and Safety Code Chapter 260A; and Texas Human Resources Code, §161.021.

§19.602. Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) [~~Human Services (DHS)~~] and Law Enforcement Agencies by Facilities.

(a) A facility owner or employee who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

(b) Reports described in subsection (a) of this section must [~~are to~~] be made to DADS [~~the DHS state office, Austin, Texas,~~] at 1-800-458-9858 and written reports must be sent to: DADS Consumer Rights and Services, P.O. Box 14930, Austin, Texas 78714-9030.

(1) The person reporting must make the telephone report immediately on learning of the alleged abuse, neglect, exploitation, conduct, or conditions. The person must send a written report to DADS Consumer Rights and Services within five days after the telephone report.

(2) The facility must conduct an investigation of the reported act(s). The facility must send a [~~A~~] written report of the investigation to DADS [~~must be sent~~] no later than the fifth working day after the oral report.

(c) As a condition of employment an [~~Each~~] employee of a facility must sign a statement that [~~which~~] states:

(1) the employee may be criminally liable for failure to report abuses; and

(2) under the Texas Health and Safety Code, Title 4, §260A.14 [~~§242.133~~], the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

(A) reporting to the employee's supervisor, the administrator, DADS [~~DHS~~], or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or

(B) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(d) The statements described in subsection (c) of this section must be available for inspection by DADS [~~DHS~~].

(e) A local or state law enforcement agency must be notified of reports described in subsection (a) of this section that[~~, which~~] allege that:

(1) a resident's health or safety is in imminent danger;

(2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(4) a resident has been a victim of any act or attempted act described in the Penal Code, §§21.02, 21.11, 22.011, or 22.021; or

(5) a resident has suffered bodily injury, as that term is defined in the Penal Code, §1.07, because of conduct alleged in the report of abuse or neglect or other complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4162

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1920, §19.1921

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; and Texas Human Resources Code, §161.021, which

provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; Texas Health and Safety Code Chapter 260A; and Texas Human Resources Code, §161.021.

§19.1920. Operating Policies and Procedures.

(a) The facility must have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, termination from Medicaid or Medicare participation in accordance with §19.2121 of this chapter (relating to General Provisions), receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights. A copy of this manual must be made available for review upon request to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

(b) The facility must have written personnel policies and procedures that are explained to employees during initial orientation and are readily available to them after that time.

(c) The facility must ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). When appropriate, a current copy of the person's license or permit must be in the file.

(d) Upon request of the Texas Department of Aging and Disability [~~Human~~] Services (DADS) [~~(DHS)~~], the facility must make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

§19.1921. General Requirements for a Nursing Facility.

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 [~~§19.2500~~] of this title (relating to Preadmission Screening and [~~Annual~~] Resident Review (PASRR)) [~~(PASARR)~~] and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A [~~In the event any~~] facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice [~~must be provided~~] to the residents and residents' relatives or responsible parties of closure. See §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice [~~must be in writing, not later than one week after the date on which the decision to close is made, giving at least 30 days notice for relocation after receipt of notice~~].

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) [~~(12)~~] of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by DADS. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by DADS giving the toll-free telephone number;

(3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by DADS of the most recent inspection report;

(5) a notice of DADS [~~DADS'~~] toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §19.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015 [~~§242.133 and §242.1335~~]; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A [~~242, Subchapter E~~];

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING 1-800-458-9858;

(11) [~~(10)~~] for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);

(12) [~~(11)~~] at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and

(13) [~~(12)~~] daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give the required department disclosure statement to an individual:

(1) with Alzheimer's disease or a related disorder, seeking placement as a resident;

(2) attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

(g) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by DADS; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

(h) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(i) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(j) [~~(i)~~] A copy of the Texas Health and Safety Code, Chapters [~~Chapter~~] 242 and 260A, must be available for public inspection at the facility.

(k) [~~(j)~~] Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §19.416 of this chapter (relating to Personal Property).

(l) [~~(k)~~] Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(m) [~~(l)~~] Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the DADS nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(n) [~~(m)~~] A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(o) [~~(n)~~] A facility must provide notification about the EMR to an employee in accordance with §93.3 of this title (relating to Employment and Registry Information).

(p) [~~(o)~~] In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(q) [~~(p)~~] A facility must upload to the DADS website, at http//fives.dads.state.tx.us/choose.asp, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens
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Department of Aging and Disability Services
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SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §19.2006, §19.2008

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code Chapter 260A, which requires a facility to report and DADS to investigate abuse, neglect, or exploitation of a nursing facility resident; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; Texas Health and Safety Code Chapter 260A; and Texas Human Resources Code, §161.021.

§19.2006. Reporting Incidents and Complaints.

(a) Each incident or complaint report must reflect the reporting person's belief that a resident has been or will be abused or neglected and must contain the following information:

(1) the address or phone number of the person making the report so that DADS [~~the Texas Department of Human Services (DHS)~~] can contact the person for any additional information, except for an anonymous report;

(2) the name and address of the resident;

(3) the name and address of the person responsible for the care of the resident, if available;

(4) information required by DADS [~~DHS~~] guidelines, when the report is an incident; and

(5) any other relevant information. Relevant information includes the reporter's or complainant's basis or cause for reporting and his or her belief that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, and any other information DADS [~~DHS~~] considers relevant for the report.

(b) Should a report not include the information in subsection [~~paragraph~~] (a) of this section [~~subsection~~], the report may be considered a complaint or an incident report not meeting the reporting criteria and may be investigated using other procedures. In receiving an oral report, DADS [~~the Texas Department of Human Services (DHS)~~] will take all reasonable steps to elicit from the reporter all the information in subsection [~~paragraph~~] (a) of this section [~~subsection~~].

(c) Anonymous complaints of abuse or neglect will be treated in the same manner as acknowledged reports unless the anonymous report accuses a specific individual of abuse or neglect, which report need not be investigated.

§19.2008. Investigations of Incidents and Complaints.

(a) In accordance with a [~~the~~] memorandum of understanding between DADS [~~the Texas Department of Human Services (DHS)~~] and the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), DADS [~~DHS~~] will receive and investigate reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter. In investigating allegations of abuse and neglect of children residing in facilities, the definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" are those found in §261.001 of the Texas Family Code.

(b) DADS [~~DHS~~] will investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to DFPS [~~the Texas Department of Protective and Regulatory Services~~].

(c) The primary purpose of an investigation is the protection of the resident. If, before the completion of an investigation, DADS [~~DHS~~] determines that the immediate removal of the resident is necessary to protect the resident from further abuse or neglect, DADS [~~DHS~~] will petition a court to allow the immediate removal of the resident from the facility.

(d) Investigations under this section are conducted in accordance with Texas Health and Safety Code, §260A.007 [~~§242.126~~].

(e) Investigations of reports do not preclude actions under the provisions of Subchapter V of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) The individual reporting the alleged abuse or neglect or other complaint, the resident, the resident's family, any person designated by the resident to receive information concerning the resident, and the facility will be notified of the results of DADS [~~DHS's~~] investigation of a reported case of abuse or neglect or other complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Aging and Disability Services
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SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2310

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§19.2310. Nursing Facility Ceases to Participate.

A nursing facility may voluntarily terminate or be involuntarily terminated from Medicaid participation. A facility must have policies and procedures in place to ensure that the administrator's duties and responsibilities include providing the appropriate notices in the event of a Medicaid termination. [~~lose its status as a participating facility if any of the following conditions are met:~~]

(1) If a facility voluntarily closes and ceases providing nursing facility services, the facility must comply with this paragraph.

(A) The facility must close on the first day of a month.

(B) At least 75 days before closure, the administrator must submit to the DADS regional director a plan for relocation of all residents. The plan must:

(i) provide for the transfer and adequate relocation of the residents;

(ii) include assurances that residents are transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident; and

(iii) be revised as necessary to obtain DADS approval.

(C) At least 60 days before closure, the administrator must submit written notice of the closure that includes the approved closure plan and the closure date to:

(i) the secretary or the secretary's designee;

(ii) DADS Regulatory Services;

(iii) the State Long-Term Care Ombudsman;

(iv) each resident; and

(v) each resident's legal representative or responsible party.

(D) The notice to each resident and the resident's legal representative or responsible party must include the information required by §19.502(f) of this chapter (relating to Transfer and Discharge in Medicaid-certified Facilities).

(E) The facility must not admit any new residents on or after the date the written notice is submitted.

(F) The facility must have the resources to operate through the closure date.

(2) If DADS or CMS terminates a facility's Medicaid provider agreement, the facility must comply with this paragraph.

(A) At least 15 days before the notice date set by DADS or CMS, the administrator must submit to the DADS regional director a plan for relocation of all residents. The plan must:

(i) provide for the transfer and adequate relocation of the residents;

(ii) include assurances that residents are transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident; and

(iii) be revised as necessary to obtain DADS approval.

(B) By the date set by DADS or CMS, the administrator must submit written notice of the closure that includes the approved plan and the closure date to:

(i) the secretary or secretary's designee;

(ii) DADS Regulatory Services;

(iii) the State Long-Term Care Ombudsman;

(iv) each resident; and

(v) each resident's legal representative or responsible party.

(C) The notice to each resident and the resident's legal representative or responsible party must include the information required by §19.502(f) of this chapter.

(D) The facility must not admit any new residents on or after the date the notice is submitted.

(3) If a facility voluntarily withdraws from Medicaid but continues to provide nursing facility services, the facility must comply with this paragraph.

(A) The facility may not use the withdrawal as a reason to transfer or discharge a resident who was residing in the facility on the day before the effective withdrawal date.

(B) The facility is deemed to have a provider agreement with regard to any resident who was residing in the facility on the day before the effective withdrawal date and who is eligible for Medicaid or who later becomes eligible for Medicaid.

(C) The facility must:

(i) provide oral and written notice to an individual who is admitted after withdrawal from Medicaid that:

(I) the facility is not participating in the Medicaid program with respect to new residents; and

(II) the facility may transfer or discharge a resident if the resident does not pay the facility charges even though the resident may have become eligible for Medicaid nursing facility services;

(ii) provide the written notice in a prominent manner on a separate page of the admission agreement when the resident is admitted; and

(iii) have the resident sign a written receipt, separate from other signed documents, that the resident received the information in the written notice.

~~[(1) the facility withdraws voluntarily from the program. The participation agreement for facilities which voluntarily withdraw from the program remains in effect with respect to services provided to residents residing in the facility the day before the effective date of the withdrawal, in accordance with Section 1919(c)(2)(F) of the Social Security Act. The owner and administrator must request withdrawal, in writing, from the Texas Department of Human Services (DHS) at least 30 days before the withdrawal date;]~~

~~[(2) DHS terminates certification of the facility;]~~

~~[(3) DHS denies a license (new or renewed) to the facility or revokes the facility's license and cancels the facility's status as a participating facility;]~~

~~[(4) the nursing facility (NF) is a Title XIX/XVIII provider of services, and Medicare (Title XVIII) terminates the contract because of contract violation; or]~~

~~[(5) DHS cancels the contract because DHS determines that the nursing facility is in breach of the contract.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2013.

TRD-201301285

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 438-4162

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SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.2322, concerning Medicaid bed allocation requirements, and the repeal of §19.2324, concerning selection and contracting procedures for adding Medicaid beds in high-occupancy areas, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendment and repeal is to revise and clarify rules regarding allocation of Medicaid beds to nursing facilities and requirements for bed allocation waivers and exemptions. Requirements in current §19.2324, which is proposed for repeal, are incorporated into various subsections of the amendment to §19.2322. New requirements in §19.2322(h) focus on high occupancy county or precinct waivers as the primary means of allocating additional Medicaid beds, with other waiver types playing a lesser role in the waiver process. Additional amendments to §19.2322 include specific details about DADS current practices to provide more detailed information to waiver applicants.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.2322 adds definitions for "county or precinct occupancy rate" and "open solicitation period"; clarifies that Medicaid beds obtained through an exemption can be the basis for a Medicaid contract; changes the phrase "quality of care" to "level of acceptable care" to more accurately describe the minimum standard of care; adds requirements previously located in §19.2324 regarding processes a nursing facility must follow to obtain Medicaid bed allocations in high occupancy areas; decreases the Medicaid occupancy rate that triggers a high occupancy county or precinct waiver from 90 percent to 85 percent for any county or precinct in the four most populous counties; clarifies when DADS will suspend a waiver application to determine whether the high occupancy county or precinct waiver is triggered; adds benchmarks that an applicant must comply with to demonstrate timely progress toward construction of a replacement nursing facility; changes the time to construct, license and certify beds from 24 months to 42 months; updates references to DADS; and makes additional minor changes for clarity and consistency. The proposed amendment also clarifies that an entity must request that DADS transfer or assign a waiver or beds, rather than the entity transferring or assigning a waiver or beds with DADS approval.

The proposed repeal of §19.2324 removes duplicate information. Requirements from §19.2324 are proposed in the amendment to §19.2322.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and repeal are in effect, enforcing or administering the amendment and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendment clarifies existing requirements and does not include additional requirements that would add additional costs.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and repeal are in effect, the public benefit expected as a result of enforcing the amendment and repeal is an improvement in the quality of nursing facility resident care by selecting and limiting the allocation of Medicaid beds to promote competition.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment and repeal. The amendment and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R10, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R10" in the subject line.

40 TAC §19.2322

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Human Resources Code, §32.0213, which provides that

DADS shall establish procedures for controlling the number of Medicaid beds in nursing facilities; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Health and Safety Code, §§242.001 - 242.906; Texas Government Code, §531.0055 and §531.021; and Texas Human Resources Code, §32.0213 and §161.021.

§19.2322. Medicaid Bed Allocation Requirements.

(a) Definitions. The words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--An individual or [~~The~~] entity requesting a bed allocation waiver or exemption.

(2) Assignment of rights--The Department of Aging and Disability Services (DADS) conveyance of [~~all rights to~~] a specific number of allocated Medicaid beds from a nursing facility or entity to another entity for purposes of constructing a new nursing facility or for any other use as authorized by this chapter [~~these rules~~].

(3) Bed allocation--The process by which DADS [~~the Texas Department of Human Services (DHS)~~] controls the number of nursing facility beds that are eligible to become Medicaid-certified in each nursing facility.

(4) Bed certification--The process by which DADS [~~DHS~~] certifies compliance with state and federal Medicaid requirements for a specified number of Medicaid beds allocated to [~~within~~] a nursing facility.

(5) County or precinct occupancy rate--The number of residents, regardless of source of payment, occupying certified Medicaid beds in a county divided by the number of Medicaid beds allocated in the county, including Medicaid beds that are certified and Medicaid beds that have been allocated but are not certified. In the four most populous counties in the state, the occupancy rate is calculated for each county commissioner precinct.

(6) [~~(5)~~] Licensee--The individual or entity, including a [~~which includes~~] controlling person [~~persons~~], that is:

(A) an applicant for licensure by DADS [~~DHS~~] under Chapter 242 of the Texas Health and Safety Code and for Medicaid certification;

(B) licensed by DADS [~~DHS~~] under Chapter 242 of the Texas Health and Safety Code; or

(C) licensed under Chapter 242 of the Texas Health and Safety Code and holds the contract to provide Medicaid services.

(7) [~~(6)~~] Lien holder--The individual or entity that holds a lien against a [~~the~~] physical plant.

(8) [~~(7)~~] Multiple-facility owner--An individual or entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(9) [~~(8)~~] Occupancy rate--The number of residents occupying certified Medicaid beds divided by the number of certified Medicaid beds in a nursing facility.

(10) Open solicitation period--A period during which a licensee, a property owner, or another entity may apply for an allocation of Medicaid beds in a high-occupancy county or precinct.

(11) [~~(9)~~] Physical plant--The land and attached structures to which beds are allocated or for which an application for bed allocation has been submitted.

(12) [~~(10)~~] Property owner--The individual [~~person~~] or entity that owns a physical plant.

(13) [~~(11)~~] Transfer of beds--DADS [~~The~~] conveyance of a specific number of allocated Medicaid beds from an existing [~~a~~] nursing facility or entity to another [~~an~~] existing licensed nursing facility. The nursing facility may use the transferred Medicaid beds to increase the number of Medicaid-certified beds currently licensed or to increase the number of Medicaid-certified [~~Medicaid certified~~] beds when additional licensed beds are added to the nursing facility in the future.

(b) Purpose. The purpose of this section is to control the number of Medicaid beds that DADS [~~for which DHS~~] contracts, to improve the quality of resident care by selective and limited allocation of Medicaid beds, and to promote competition.

(c) Bed allocation general requirements. The allocation of Medicaid beds is [~~represents~~] an opportunity for the property owner or the lessee of a nursing facility to obtain a Medicaid nursing facility contract for a specific number of Medicaid-certified beds.

(1) Medicaid beds are allocated to a nursing facility and remain at the physical plant where [~~to which~~] they were originally [~~were~~] allocated, unless DADS transfers or assigns the beds [~~are assigned or transferred in accordance with these requirements~~].

(2) When DADS allocates Medicaid beds [~~are allocated~~] to a nursing facility as a result of actions by the licensee, DADS requires that the beds remain allocated to the physical plant, even when the licensee ceases operating the nursing facility, unless DADS assigns or transfers the beds [~~are subsequently assigned or transferred in accordance with these requirements~~].

(3) Notwithstanding any language in subsections (f) and (g) of this section and the fact that applicants for bed allocation waivers and exemptions may be licensees or property owners, DADS allocates beds are allocated to the physical plant and the owner of that property controls the Medicaid beds [~~rights to all allocated Medicaid beds belong to the property owner,~~] subject to DADS rules and requirements and [~~any and~~] all valid physical plant liens.

(d) Control of beds. Except as specified in this section, DADS [~~DHS~~] does not accept applications for a Medicaid contract for nursing facility beds from any nursing facility that was not granted:

(1) a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985;

(2) a waiver or exemption approved by the Department of Human Services [~~DHS~~] before January 1, 1993; or

(3) a [~~other~~] valid order that had the effect of authorizing the operation of the nursing facility at the bed capacity for which participation is sought.

(e) Level [~~Quality~~] of acceptable care. Unless specifically exempted from this requirement, applicants and controlling persons of an applicant for Medicaid bed allocation waivers or exemptions [~~and any controlling persons~~] must comply with level of acceptable care requirements. Level of acceptable care requirements apply only in determining bed allocation waiver and exemption eligibility and have no effect on other sections of this chapter [~~demonstrate a history of providing quality care~~].

[~~(1) In determining if an applicant or a controlling person has a history of providing quality care, DHS may consider the provi-~~

sions detailed in §19.214(a) of this title (relating to Criteria for Denying a License or Renewal of a License).]

(1) [(A)] DADS determines a waiver or exemption [Additionally, DHS will determine an] applicant or a controlling person of an applicant complies with level of acceptable care requirements [to have demonstrated a history of quality of care] if, within the preceding 24 months, the [an] applicant or controlling person:

(A) has not received any of the following sanctions:

(i) termination of Medicaid or [and/or] Medicare certification;

(ii) termination of Medicaid contract;

(iii) denial, suspension, or revocation of a nursing facility license;

(iv) cumulative Medicaid or [and/or] Medicare civil monetary penalties totaling more than $5,000 per facility;

(v) civil penalties pursuant to §242.065 of the Texas Health and Safety Code; or

(vi) denial of payment for new admissions; [and]

(B) does not have a [DHS finds no clear] pattern of substantial or repeated licensing and Medicaid sanctions, including administrative penalties or [and/or] other sanctions; and[.]

(C) does not have a condition listed in §19.214(a) of this chapter (relating to Criteria for Denying a License or Renewal of a License).

(2) DADS considers the criteria in paragraph (1) of this subsection to determine if local facilities provide a level of acceptable care in counties, communities, ZIP codes or other geographic areas that are the subject of a waiver application. DADS only considers sanctions that are final and are not subject to appeal when determining if a local facility complies with level of acceptable care requirements.

(3) [(2)] Nursing facilities that have received any of the sanctions listed in [under] paragraph (1) of this subsection within the previous 24 months are not eligible for an allocation of Medicaid beds under subsection (h) of this section or an allocation of additional Medicaid beds under subsection (f) of this section. In the case of sanctions against the nursing facility to which the beds would be allocated that are appealed, either administratively or judicially, an application will be suspended until the appeal has been resolved. Sanctions that have been administratively withdrawn or were subsequently reversed upon administrative or judicial appeal are [will] not [be] considered.

(4) [(3)] When the applicant for an allocation of additional Medicaid beds is a multiple-facility owner or a multiple-facility owner owns an applicant nursing facility, the multiple-facility owner must demonstrate an overall record of complying with level of acceptable care requirements. DADS only considers sanctions that are final and are not subject to appeal when determining whether the multi-facility owner's facilities not receiving the new bed allocation comply with level of care requirements. [providing quality care in addition to the applicant facility's meeting the quality-of-care requirements in this subsection.]

(5) [(4)] When the applicant is a licensee that has operated a nursing facility [for] less than 24 months, the nursing facility must establish at least a 12-month compliance record immediately preceding the application in which the nursing facility has not received any of the sanctions listed under paragraph (1) of this subsection.

(6) [(5)] When the applicant has no history of operating nursing facilities, DADS [DHS] will review the compliance record of health-care facilities operated, managed, or otherwise controlled by controlling parties of the applicant. If a [the] controlling party [parties] or the applicant has never operated, managed, or otherwise controlled any health-care facilities, a compliance review is not [will not be] required.

(7) [(6)] The commissioner, or the commissioner's designee, may make an exception to any of the requirements in this subsection if the commissioner or the commissioner's designee determines [it is determined] the needs of Medicaid recipients in a local community will be served best by granting a Medicaid bed allocation waiver or exemption. In determining whether to make an exception to the [quality-of-care] requirements, the commissioner or the commissioner's designee may consider the following:

(A) the overall compliance record of the waiver or exemption applicant;

(B) the current availability of Medicaid beds in facilities that comply with level of acceptable care requirements [providing a high quality of care] in the local community;

(C) the level of support for the waiver or exemption from the local community;

(D) the way [how] a waiver or exemption will improve the overall quality of care for nursing facility residents; and

(E) the age and condition of nursing facility physical plants in the local community.

(f) Exemptions. DADS [Under the following circumstances, DHS] may grant an exemption from [of] the requirements [policy stated] in subsection (d) of this section. All exemption actions must comply with the requirements in this subsection and with requirements of the Centers for Medicare and Medicaid Services (CMS) regarding bed capacity increases and decreases [additions and reductions]. When a bed allocation exemption is approved, the licensee must comply with the requirements [contained] in §19.201 of this chapter [title] (relating to Criteria for Licensing) at the time of licensure and [and/or] Medicaid certification of the new beds or nursing facility.

(1) Replacement Medicaid nursing facilities and beds. An applicant may request that DADS approve replacement of [Currently] allocated Medicaid beds by [may be replaced through] the construction of one or more new nursing facilities.

(A) The applicant must [either] own the physical plant where [to which] the beds are allocated or possess a valid assignment of rights to the Medicaid beds.

(B) The applicant must obtain written approval by all lien holders of the physical plant where the beds are allocated before requesting DADS approval to relocate the Medicaid beds to the replacement facility if the replacement facility will be constructed at a different address than the current facility. The applicant must submit the lien holder approval with the replacement nursing facility request. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the replacement nursing facility request.

[(B) Assignment of the Medicaid beds to the replacement nursing facility must be approved by all lien holders of the physical plant to which the beds are allocated.]

(C) Replacement nursing facility applicants, including those who obtained the rights to the beds through a DADS [valid] assignment of beds [rights], must comply with the level of acceptable care [history of quality-of-care] requirements in subsection (e) of this

section, unless the applicant for a replacement nursing facility is the current property owner.

(D) DADS may grant a replacement facility [~~Replacement facilities will be granted~~] an increase of up to 25 percent [~~%~~] of the currently allocated Medicaid beds, if the applicant complies with the level of acceptable care [~~history of quality-of-care~~] requirements in subsection (e) of this section. DADS will not transfer or assign the [~~The~~] additional allocation of beds [~~may not be transferred or assigned~~] until they are certified at the replacement facility.

(E) The physical plant of the replacement nursing facility must be located in the same county in which the Medicaid beds currently are allocated.

(2) Transfer of Medicaid beds. An applicant may request DADS transfer allocated [~~Allocated~~] Medicaid beds [~~currently~~] certified or previously certified [~~previously may be transferred~~] to another physical plant.

(A) The applicant must own the physical plant where [~~to which~~] the beds are allocated, or the applicant [~~or~~] must present DADS [~~DHS~~] with [~~one of the following~~]:

(i) a valid Medicaid bed transfer agreement that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate [~~to be allocated~~] to the receiving nursing facility; or

(ii) a valid Medicaid bed assignment [~~of rights to currently allocated Medicaid beds~~] that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate [~~to be allocated~~] to the receiving nursing facility.

(B) If the Medicaid beds [~~currently~~] are allocated to a specific physical plant, the applicant must obtain and submit written approval by the [~~current~~] property owner and, if the physical plant has a lien, all [~~current~~] lien holders obtain a DADS transfer of the Medicaid beds to another facility. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the transfer request. [~~must approve the transfer agreement.~~]

(C) The receiving licensee must comply with level of acceptable care [~~the history of quality-of-care~~] requirements in subsection (e) of this section.

(D) Both facilities must be located in the same county.

(3) High-occupancy facilities. Medicaid-certified nursing facilities with high occupancy rates may periodically apply to DADS to receive bed allocation increases.

(A) The occupancy rate of the Medicaid beds of the applicant nursing facility must be at least 90.0 percent [~~90%~~] for nine of the previous 12 months prior to the application.

(B) The application for additional Medicaid beds may be for no more [~~greater~~] than 10 percent [~~%~~] (rounded to the nearest whole number) of the facility's [~~current number of~~] Medicaid-certified nursing facility beds.

(C) The applicant nursing facility must comply with level of acceptable care [~~the history of quality-of-care~~] requirements in subsection (e) of this section.

(D) The applicant nursing facility may reapply for additional Medicaid beds no sooner than nine months from the date of the previous allocation increase.

(E) Medicaid beds allocated to a nursing facility under this requirement may only be certified at the applicant nursing facility. DADS does not transfer or assign the [~~The~~] additional allocation of beds [~~may not be transferred or assigned~~] until they are certified at the applicant nursing facility.

(4) Non-certified nursing facilities. Licensed nursing facilities that do not have Medicaid-certified beds may apply to DADS for [~~receive~~] an initial allocation of Medicaid beds.

(A) The application for Medicaid beds may be for no more [~~greater~~] than 10 percent [~~%~~] (rounded to the nearest whole number) of the facility's [~~current~~] licensed nursing facility beds.

(B) The applicant nursing facility [~~licensee~~] must comply with level of acceptable care [~~the history of quality-of-care~~] requirements in subsection (e) of this section.

(C) After the applicant nursing facility receives an allocation of Medicaid beds, the facility [~~licensee~~] may apply for additional Medicaid beds [~~reapply~~] in accordance with [~~provisions of~~] paragraph (3) of this subsection.

(D) Facilities that have Medicaid beds allocated under provisions of an [~~the~~] Alzheimer's waiver may apply for general Medicaid beds in accordance with paragraph (3) or (4) of this subsection. DADS does not count the [~~The~~] beds allocated under an [~~the~~] Alzheimer's waiver provision in determining the allowable bed allocation increase. For [~~provisions will be excluded from this computation; for~~] example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10 percent [~~%~~] of the 60 remaining beds or six additional Medicaid beds.

(5) Low-capacity facilities. For purposes of efficiency, nursing facilities with a Medicaid bed capacity of less than 60 may receive additional Medicaid beds to increase their capacity up to a total of 60 Medicaid beds.

(A) The nursing facility must be licensed for less than 60 beds and have a current certification of less than 60 Medicaid beds.

(B) The nursing facility must have been Medicaid-certified before June 1, 1998.

(C) The applicant licensee must comply with level of acceptable care [~~the history of quality-of-care~~] requirements in subsection (e) of this section.

(D) Facilities that have a Medicaid capacity of less than 60 beds due to the loss of Medicaid beds under provisions in subsection (h) of this section are not eligible for this exemption.

(6) Spend-down Medicaid beds. Licensed nursing facilities may apply to DADS for [~~receive~~] temporary spend-down Medicaid beds for residents who have "spent down" their resources to become eligible for Medicaid, but for whom no Medicaid bed is available. A DADS approval [~~Approval~~] of spend-down Medicaid beds allows a nursing facility to exceed temporarily its allocated Medicaid bed capacity.

(A) The applicant nursing facility must have a Medicaid contract with a Medicaid bed capacity of at least 10 percent of licensed capacity authorized in paragraph (4) of this subsection. If the nursing facility is not currently Medicaid-certified, the licensee must be approved for Medicaid certification and obtain a Medicaid contract with a Medicaid bed capacity at least as large as that authorized in paragraph (4) of this subsection.

(B) All Medicaid or dually certified beds must be occupied by Medicaid or Medicare recipients at the time of application.

(C) The application for a spend-down Medicaid bed must include documentation that the person for whom the spend-down bed is requested:

(i) was not eligible for Medicaid at the time of the resident's most recent admission to the nursing facility; and

(ii) was a resident of the nursing facility for at least the immediate three months before becoming eligible for Medicaid, excluding hospitalizations.

(D) The nursing facility is eligible to receive Medicaid benefits effective the date the resident meets Medicaid eligibility requirements.

(E) The nursing facility must assign a permanent Medicaid bed to the resident as soon as one becomes available.

(F) Facilities with multiple residents in spend-down beds must assign permanent Medicaid beds to those residents in the same order the residents were admitted to spend-down beds.

(G) The assignment of residents in spend-down beds to permanent Medicaid beds must precede the admission of new residents to permanent beds.

(H) The nursing facility must notify DADS [~~DHS~~] immediately upon the death or permanent discharge of the resident or transfer of the resident to a permanent Medicaid bed. Failure of the nursing facility to notify DADS [~~DHS~~] of these occurrences in a timely manner is basis for denying applications for spend-down Medicaid beds.

(I) The nursing facility is not required to comply with level of acceptable care [~~quality-of-care~~] requirements in subsection (e) of this section.

(g) Waivers. The commissioner or the commissioner's designee may grant a waiver of the requirements [~~policy~~] stated in subsection (d) of this section under certain conditions.

(1) Applicants must meet the following conditions to be eligible for the specific waivers in subsection (h) of this section.

(A) [~~(1)~~] The applicant must meet the level of acceptable care [~~quality-of-care~~] requirement [~~stated~~] in subsection (e) of this section.

(B) The applicant must submit a complete DADS waiver application.

[~~(2) Every waiver application must include identification of all controlling parties of the applicant entity.~~]

(C) [~~(3)~~] At the time of licensure and [~~and/or~~] Medicaid certification of the allocated beds, the licensee must comply with the requirements [~~contained~~] in §19.201 of this chapter [~~title~~].

(D) A waiver recipient or a subsequent waiver assignee must, at the time of license and Medicaid certification, be the property owner or the licensee of the facility where Medicaid beds allocated through the waiver process are certified.

(2) [~~(4)~~] A waiver recipient may request that DADS approve the assignment of an approved waiver [~~Approved waivers may be assigned by the applicant~~] to another entity in accordance with this paragraph. A waiver recipient may request DADS approval of only one assignment. A waiver assignment is not valid unless and until it is approved by DADS [~~under the following circumstances~~].

(A) The waiver recipient or the owner of the waiver recipient must maintain majority ownership and management control of the assignee.

(B) The assignee must not have an owner or controlling person who was not an owner or controlling person of the waiver recipient.

(C) The assignee must own the physical plant of the waiver facility at the time of licensure and certification (as landlord) or be the licensee at the time of licensure and certification (as the licensed operator). Under either circumstance, the allocated beds are subject to subsection (c) of this section.

(D) The assignee must meet the requirements in subsection (e) of this section regarding level of acceptable care.

[~~(A) Waivers may be assigned to another entity controlled by the majority owners of the waiver.~~]

[~~(B) Waivers may be assigned to the entity that owns the facility at the time of certification. Assignment of the waiver under these circumstances will be approved by DHS only if the entity that owns the facility at the time of certification complies with subsection (e) of this section and the waiver applicant is the licensee of the new facility. Control of the allocated beds after initial Medicaid certification is subject to subsection (c) of this section.~~]

[~~(C) Assignment of waivers under circumstances listed in subparagraphs (A) and (B) of this paragraph must be reported to DHS.~~]

(3) A waiver recipient entity may remove a controlling person from ownership of the entity, but the waiver recipient entity must not add an owner after the waiver is approved by DADS. A change to the ownership of the waiver recipient entity or the waiver assignment entity must be reported to DADS.

[~~(5) Any additional controlling parties of the new entity must be reported to DHS. The validity of the waiver will be contingent on the new controlling parties' compliance with the quality-of-care requirements in subsection (e) of this section.~~]

(4) [~~(6)~~] DADS may in its sole discretion determine that a waiver applicant that submits [~~Waiver applicants who submit~~] false or fraudulent information is [~~will~~] not [~~be~~] eligible for a waiver. DADS may, in its sole discretion, revoke a waiver [~~Waivers~~] issued and decertify Medicaid beds issued based on false or fraudulent information provided by the applicant [~~are void~~].

(5) [~~(7)~~] DADS considers waiver [~~Waiver~~] applications [~~will be considered~~] in the order in which they are received. A waiver applicant may request that review of its application be deferred until one or more applications submitted after its application has been reviewed. This request must be in writing.

(6) During any period in which DADS is processing a waiver application in accordance with subsection (h)(2), (4), or (5) of this section, DADS may suspend processing the waiver application for up to six months if DADS determines the county or precinct occupancy rate of the county or precinct in which the site of the proposed waiver is located is at least 85 percent during at least six of the previous nine months.

(7) DADS initiates the high occupancy county or precinct waiver process referenced in subsection (h)(1) of this section if DADS determines requirements for the open solicitation process for a high occupancy county or precinct waiver are met during the temporary suspension period referenced in paragraph (6) of this subsection. DADS does not process any pending waiver applications in the affected county or precinct until the open solicitation process referenced in subsection (h)(1) of this section is complete.

(8) DADS continues to process a suspended waiver application in the affected county or precinct if DADS determines requirements for the open solicitation process of the high occupancy county or precinct waiver are not met during the suspension period referenced in paragraph (6) of this subsection.

(h) Specific waiver types [~~waivers~~]. DADS may grant a waiver [~~Waivers may be granted~~] if it determines [~~is determined~~] that Medicaid beds are necessary for the following circumstances.

(1) High occupancy waiver. A high occupancy waiver is designed to meet the needs of counties and certain precincts that have a high county or precinct occupancy rate for multiple months.

(A) DADS monitors monthly county or precinct occupancy rates. If DADS determines that a county or precinct occupancy rate equals or exceeds 85 percent for at least nine of the previous twelve months, DADS may initiate a waiver process by placing a public notice in the *Texas Register* and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

(B) The public notice announces that DADS may allocate 90 additional Medicaid beds in the county or precinct.

(C) The notice identifies the county or precinct and the beginning and end dates of the solicitation period. The notice also includes the DADS address to which the application for additional Medicaid beds must be submitted and specifies that the application must be received by DADS before the close of business on the end date of the solicitation period.

(D) An applicant for additional Medicaid beds must comply with the level of acceptable care requirements in subsection (e) of this section.

(E) An applicant must submit a complete DADS waiver application.

(F) At the end of the solicitation period, DADS determines if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant who will receive the allocation of beds will be chosen by a lottery selection.

(G) If no application for the waiver process is received or if no applicant meets the requirements in this section, DADS conducts no further solicitation. DADS closes the process without allocating Medicaid beds.

(2) [~~(1)~~] Community needs waiver. A community needs waiver is designed to meet the needs of communities that do not have reasonable access to acceptable [~~quality~~] nursing facility care.

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies, that documents:

(i) an immediate need for additional Medicaid beds in the community;

(ii) Medicaid residents in the community do not have reasonable access to acceptable [~~quality~~] nursing facility care; and

(iii) substantial community support for the new nursing facility or beds.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local authorities; and

(v) any existing allocated Medicaid beds not currently certified but that could be used for a new Medicaid nursing facility.

(D) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(E) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) DADS notifies local nursing facilities when a complete community needs waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

[~~(B) Applicants must disclose if they have served as a trustee of a nursing facility within the previous 24 months.~~]

(3) [~~(2)~~] Criminal justice waiver. The criminal justice waiver is designed to meet the needs of the Texas Department of Criminal Justice (TDCJ). The applicant must document that:

(A) the waiver is needed to meet the identified and determined nursing facility needs of TDCJ; and

(B) the new nursing facility is approved by TDCJ to serve persons under their supervision who have been released on parole, mandatory supervision, or special needs parole in accordance with Texas Government Code, Chapter 508, Parole and Mandatory Supervision [~~under the Code of Criminal Procedure, Article 42.18~~].

(4) [~~(3)~~] Economically disadvantaged [~~Under-served minority~~] waiver. The economically disadvantaged [~~under-served minority~~] waiver is designed to meet the needs of residents of ZIP codes located in [~~minority~~] communities where a majority of residents have an average income below the countywide average income and [~~that~~] do not have reasonable access to acceptable [~~adequate~~] nursing facility care. [~~For purposes of this waiver, the term minority means black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan native.~~]

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies[,] that documents:

(i) [~~(A)~~] the ZIP code in which the new nursing facility will be constructed [~~or beds will serve a ZIP code that~~] has a [~~minority~~] population with an income that is at least 20 percent below the average income of the county [~~greater than 50%~~] according to the most recent U.S. census or more recent census projection; [~~and~~]

(ii) an immediate need for additional Medicaid beds in the ZIP code in which the new nursing facility will be constructed; and

(iii) [~~(B)~~] [~~minority~~] residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to acceptable [~~quality~~] nursing facility care.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local facilities; and

(v) any existing allocated Medicaid beds not currently certified but could be used for a new Medicaid nursing facility.

(D) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(E) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) DADS notifies local nursing facilities when a complete economically disadvantaged waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(5) [~~(4)~~] Alzheimer's waiver. The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

(A) The applicant must document that:

(i) the nursing facility is affiliated with a medical school operated by the state;

(ii) the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;

(iii) the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;

(iv) the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with §§19.2204, 19.2206, and 19.2208 of this chapter [~~title~~] (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease; General Requirements for a Certified Facility; and Standards for Certified Alzheimer's Facilities); and

(v) only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid beds.

(B) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic studies[,] that documents the need for the number of Medicaid Alzheimer's beds requested. The study must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) DADS notifies local nursing facilities when a complete Alzheimer's waiver application is received and afford local nursing facilities an opportunity to comment on the waiver application. The notification will include a deadline for submission of comments. DADS limits subsequent comments curing the review process to facilities that submit timely comments in response to the notification of a completed application.

(D) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(6) [~~(5)~~] Teaching nursing facility waiver. A teaching nursing facility waiver is designed to meet the statewide needs for providing training and practical experience for health-care professionals. The applicant must submit documentation that the nursing facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching nursing facility for physicians and related health-care professionals.

(7) [~~(6)~~] Rural county waiver. A rural county waiver is designed to meet the needs of rural areas of the state that do not have reasonable access to acceptable [~~quality~~] nursing facility care. For purposes of this waiver, a rural county is one that has a population of 100,000 or less according to the most recent census, and has no more than two Medicaid-certified nursing facilities. DADS approves [~~DHS will approve~~] no more than 120 additional Medicaid beds per county per year and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. DADS considers a waiver application [~~The waivers will be considered~~] on a first-come, first-served basis. Requests received in a year in which the 500-bed limit has been met will be carried over to the next year. The county commissioner's court [~~waiver~~] must request the waiver [~~be requested by the county commissioner's court~~].

(A) The commissioner's court must notify DADS [~~DHS~~] of its intent to consider a rural county waiver and obtain

verification from DADS [~~DHS~~] that the county complies with the definition of rural county.

(B) The commissioner's court must publish a notice in the *Texas Register* and in a newspaper of general circulation in the county. The notice must seek:

(i) comments on whether a new Medicaid nursing facility should be requested; and

(ii) proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates. DADS, in its sole discretion, may eliminate from participating in the process persons [~~Persons~~] or entities that submit false or fraudulent information [~~will be eliminated from the process~~].

(C) The commissioner's court must determine whether to proceed with the waiver request after considering all comments and proposals received in response to the notices provided under subparagraph (B) of this paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:

(i) the demographic and economic needs of the county;

(ii) the quality of existing Medicaid nursing facilities in the county;

(iii) the quality of the proposals submitted, including a review of the past history of care provided, if any, by the person or entity submitting the proposal; and

(iv) the degree of community support for additional Medicaid nursing facility services.

(D) The commissioner's court must document the comments received, proposals offered and factors considered in subparagraph (C) of this paragraph.

(E) If the [~~The~~] commissioner's court[~~, if it~~] decides to proceed with the waiver request, it must submit a recommendation that DADS [~~DHS~~] issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:

(i) the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;

(ii) the location, if the commissioner's court desires to identify one, of the recommended nursing facility;

(iii) the number of beds recommended; and

(iv) the information listed in subparagraph (D) of this paragraph used to make the recommendation.

(8) [~~(7)~~] State veterans homes. State veterans homes, authorized and built under the auspices of the Texas [~~State~~] Veterans Land Board, must meet all requirements for Medicaid participation.

(i) Time Limits and Extensions.

[~~(1) With the exception of transferred Medicaid beds and temporary Medicaid beds, all beds approved under the exemption provisions of subsection (f) of this section must be constructed, licensed, and certified within 24 months of the exemption approval.~~]

(1) [~~(2)~~] Medicaid beds transferred in accordance with subsection (f)(2) of this section must be certified within six months after DADS grants [~~of~~] the exemption [~~approval~~].

(2) [~~(3)~~] Time limits applicable to temporary Medicaid beds are specified in subsection (f)(6) of this section.

(3) [~~(4)~~] All facilities and beds approved in accordance with waiver provisions of subsection (h) of this section and replacement nursing facilities approved in accordance with subsection (f)(1) of this section, must be constructed, licensed, and Medicaid-certified [~~certified~~] within 42 [~~24~~] months after [~~of~~] the waiver or replacement exemption is granted [~~approval~~].

(4) Recipients of a waiver approval or a replacement nursing facility approval must comply with the following benchmarks and submit evidence of compliance to DADS at the time of compliance.

(A) The land must be under contract within 12 months after DADS approval of the waiver or replacement.

(B) An architect or engineer must be under contract within 15 months after DADS approval of the waiver or replacement.

(C) The facility's preliminary plans must be completed within 18 months after DADS approval of the waiver or replacement.

(D) The land must be purchased and a progress report submitted to DADS within 24 months after DADS approval of the waiver or replacement.

(E) Entitlements (including municipality, planning and zoning, building permit) and the facility's foundation must be completed within six months after land purchase or 30 months after DADS approval of the waiver or replacement, whichever is later.

(F) A construction progress report confirming active and ongoing construction must be submitted within 12 months after land purchase or 36 months after DADS approval of the waiver or replacement, whichever is later, if the facility is not constructed, licensed and certified by that date.

(G) The facility must be constructed, licensed, and certified within 18 months after land purchase or 42 months after DADS approval of the waiver or replacement, whichever is later.

(5) DADS, in its sole discretion, may declare the exemption or the waiver void if the applicant fails or refuses to provide evidence of compliance with each benchmark or deadline, or the evidence of compliance submitted to DADS in accordance with paragraph (4) of this subsection contains false or fraudulent information.

[~~(5) With the exception of transferred Medicaid beds and temporary Medicaid beds, applicants for exemptions and waivers must submit a progress report every 12 months after approval of the exemption or waiver. The exemption or waiver may be declared void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false information.~~]

(6) Waiver or exemption recipients may request an extension of the deadlines in this section. At the discretion of the commissioner or the commissioner's designee, deadlines specified in this section may be extended. The applicant must substantiate every element of its extension request with [~~submit~~] evidence of good-faith efforts to meet the benchmarks and construction deadlines or [~~deadline and/or~~] evidence confirming that delays were beyond the applicant's control.

(7) Waiver or exemption recipients [~~Applicants~~] who receive an extension of their waiver or [~~of~~] exemption must submit a progress report every six months after approval of the extension until the nursing facility beds are certified. DADS may declare the waiver or [~~The~~] exemption [~~or waiver may be declared~~] void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false or fraudulent information.

(8) DADS may revoke a bed allocation for failure to meet the requirements of this section.

[(8) Failure to meet the requirements of this section is grounds for loss of the Medicaid bed allocation.]

(j) Loss of Medicaid Beds.

(1) Loss of Medicaid beds that are not available to be occupied.

(A) Medicaid nursing facilities must report certified Medicaid beds that do not comply with requirements of §19.1701 of this chapter (relating to Physical Environment) and are not available for occupancy on monthly Medicaid occupancy reports.

(B) DADS decertifies and de-allocates Medicaid beds that are intended for use in bedrooms that have been converted to other uses if the rooms are not being used for bedroom occupancy use on two consecutive standard surveys.

(C) DADS does not decertify and de-allocate Medicaid beds that are intended for use in rooms that are licensed and certified for multi-occupancy use but are being used for single occupancy only.

(2) [(1)] Loss of Medicaid beds based on sanctions.

(A) A Medicaid nursing facility operated by the person or entity who also owns the property will lose the allocation of all Medicaid beds assigned to the nursing facility property if the nursing facility's license is denied or revoked.

(B) A Medicaid nursing facility operated by one person or entity and owned by another person or entity will lose the allocation of Medicaid beds if two or more of the following actions occur within a 42-month period:

(i) licensure denial;

(ii) licensure revocation; or

(iii) Medicaid termination.

(C) DADS [DHS] may waive this loss of allocation of Medicaid beds in order to facilitate a change of ownership or other actions that would protect the health and safety of residents or assure reasonable access to acceptable [quality] nursing facility care.

(3) [(2)] Voluntary decertification of Medicaid beds.

(A) Facilities may request to voluntarily decertify Medicaid beds.

(B) The licensee must submit written approval of the Medicaid bed reduction signed by the property owner and all physical plant lien holders.

(C) DADS reduces the number of allocated Medicaid beds [voluntarily decertified will result in reduction of allocated Medicaid beds] equal to the number of beds voluntarily decertified.

(D) Facilities that voluntarily decertify Medicaid beds are eligible to receive an increased allocation of Medicaid beds if the facility qualifies for a bed allocation waiver or exemption.

(4) [(3)] Nursing facility ceases to operate or participate in Medicaid.

(A) The property owner of a nursing facility that closes or ceases to participate in the Medicaid program must inform DADS [DHS] in writing of the intended future use of the Medicaid beds within 90 days after [of] closure or ceasing participation in Medicaid.

(B) Unless the Medicaid beds will be used for a replacement nursing facility, the allocated beds must be re-certified within 12 months of the date the Medicaid contract was terminated.

(C) Time limits in subparagraphs (A) and (B) of this paragraph may be extended in accordance with subsection (i)(6) of this section.

(D) DADS may de-allocate Medicaid beds for failure [Failure] to meet the requirements of this paragraph [is grounds for loss of the Medicaid bed allocation].

(5) Loss of Medicaid beds based on low occupancy.

(A) DADS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DADS has validated are used to determine the bed occupancy rate of each nursing facility.

(B) DADS de-allocates and decertifies Medicaid beds in facilities with an average occupancy rate below 70 percent. The number of beds decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70 percent of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50 percent occupancy rate, the difference between 70 percent (70 beds) and 50 percent (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.

(C) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.

(D) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant are exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for 24 months.

(E) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.

(F) Medicaid beds in a county or in a precinct in one of the four most populous counties in the state in which a facility approved through the waiver process is constructed are exempt from the de-allocation and decertification process for 24 months after licensure and certification of the facility.

(G) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.

(H) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.

(I) The de-allocation and decertification of unused beds does not affect the licensed capacity of a nursing facility.

(k) Informal review procedures.

(1) Applicants may request an informal review of DADS [DHS] actions regarding bed allocations. The request must be submitted within 30 days after the date referenced on the [of] notification of the proposed action.

(2) An applicant must submit a [The] request for an [the] informal review and all documentation or evidence that forms the basis for the informal review [must be submitted] in writing.

(3) The commissioner or the commissioner's designee conducts [will conduct] the informal review.

[(l) Loss of Medicaid beds based on low occupancy.]

[(1) DHS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DHS has validated will be used to determine the bed occupancy rate of each nursing facility.]

[(2) Medicaid beds will be de-allocated and decertified in facilities that have an average occupancy rate below 70%. The number of beds to be decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70% of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50% occupancy rate, the difference between 70% (70 beds) and 50% (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.]

[(3) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.]

[(4) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant will be exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for two years.]

[(5) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.]

[(6) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.]

[(7) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.]

[(8) The de-allocation and decertification of unused beds does not affect the licensed capacity of the nursing facility.]

(l) [(m)] Medicaid occupancy reports.

(1) Medicaid nursing facilities must submit occupancy reports to DADS [DHS] each month.

(A) The occupancy data must be reported on a form prescribed by DADS [DHS]. The form must be completed in accordance with instructions and the occupancy data must be accurate and verifiable. The completed report must be received by DADS [submitted to DHS] no later than the fifth day of the month following the reporting period.

(B) DADS determines the [The] Medicaid occupancy rate [will be determined] by calculating the monthly average of the number of persons who occupy Medicaid beds.

(C) DADS includes all [All] persons residing in Medicaid-certified beds, including Medicaid recipients, Medicare recipients, private-pay residents, or residents with other sources of payment, [will be included] in the calculation.

(D) Failure or refusal to submit accurate occupancy reports in a timely manner may result in the nursing facility's vendor payment being held in abeyance until the report is submitted.

(2) DADS determines [DHS will determine] nursing facility and county occupancy rates based on the data submitted by the nursing facilities.

(A) DADS uses the [The] occupancy data [will be used] to determine eligibility for or [and/or] compliance with waiver and exemption requirements. DADS also uses the [The] occupancy data [also will be used] to determine if Medicaid beds should be decertified based on low occupancy.

(B) DADS makes the [The] occupancy data [will be made] available to nursing facilities, licensees, property owners, waiver or exemption applicants, and others in accordance with public disclosure requirements.

(C) DADS may disqualify a facility that provides inaccurate [Inaccurate] or falsified occupancy data [is grounds to disqualify facilities] from eligibility for bed allocation exemptions and waivers. DADS [DHS] may refuse to accept corrections to bed occupancy data submitted more than six months after the due date of the occupancy report.

(m) [(n)] School-age residents. Any bed allocation waiver or exemption applicant that serves or plans to serve school-age residents must provide written notice to the affected local education agency (LEA) of its intent to establish or expand a nursing facility within the LEA's boundary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2013.

TRD-201301279
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 438-4162

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40 TAC §19.2324

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Health and Safety Code, §§242.001 - 242.906; Texas Government Code, §531.0055 and §531.021; and Texas Human Resources Code, §161.021.

§19.2324. Selection and Contracting Procedures for Adding Medicaid Beds in High-Occupancy Areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2013. ♦ ♦ ♦

TRD-201301278
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 12, 2013
For further information, please call: (512) 438-4162

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §217.7 which appeared in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10149).

Filed with the Office of the Secretary of State on March 25, 2013.

TRD-201301253
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 25, 2013
For further information, please call: (512) 936-7713

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Health and Human Services Commission (HHSC) adopts the amendments to §354.1070, concerning Definitions, and §354.1072, concerning Authorized Inpatient Hospital Services. Additionally, HHSC adopts new Division 35, Reimbursement Adjustments for Potentially Preventable Events, to include new §354.1445 concerning Potentially Preventable Readmissions and §354.1446 concerning Potentially Preventable Complications. The amendments to §354.1070 and §354.1072 are adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 547) and will not be republished. New §354.1445 and §354.1446 are adopted with changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 547) and will be republished.

Background and Justification

Senate Bill (S.B.) 7, 82nd Legislature, First Called Session, 2011 requires HHSC to identify potentially preventable readmissions (PPR) and potentially preventable complications (PPC) in the Medicaid population and confidentially report the results to each hospital annually. The hospital is required to distribute the information to its health care providers. Additionally, the bill requires HHSC to implement quality-based payments to hospitals based on the results of the PPR and PPC analysis. HHSC proposes new Division 35 to define the methodology for applying the PPR and PPC rate adjustments. HHSC also proposes to substitute the broader term "potentially preventable events" throughout the rules to identify all of the preventable events for which payment reductions will apply.

The 2012-13 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Rider 61(b)(23)), authorizes HHSC to implement the Medicare billing prohibition as a Medicaid cost containment measure. The Medicare billing prohibition refers to Medicare's policy for payment of outpatient hospital services provided in hospital outpatient departments on either the day of or during the three days prior to an inpatient admission.

Under this policy, a hospital (or an entity wholly owned or operated by the hospital) includes, in its charges for the inpatient hospital stay, charges for all diagnostic services and non-diagnostic services "related to the admission" that are provided during the three-day payment window. Hospitals that are not "subsection (d)" hospitals (those described in Social Security Act §1886(d), *e.g.,* children's hospitals and psychiatric hospitals) are subject to a one-day payment window instead of the three-day payment window.

The rule changes implementing the Medicare billing prohibition policy that went into effect September 1, 2012, contained an error. After further review of the federal law, HHSC proposes to delete "unless provided on the date of the patient's admission" from the rule.

Comments

During the public comment period, which included a public hearing on March 6, 2013, HHSC received three comments from the Texas Hospital Association (THA). Summaries of each comment and HHSC's responses follow.

Comment: HHSC received a comment related to the proposed new rule for Potentially Preventable Readmissions. The commenter recommends HHSC reduce the proposed payment adjustment to an amount that is more closely aligned with the rates paid to hospitals by the Medicaid program. It was suggested the adjustment be reduced to between .5% and 1.0% instead of 1.0% and 2.0%.

Response: HHSC disagrees with the commenter's recommendation. HHSC continues to work on increasing the emphasis on quality, efficiency, and initiatives to invest in quality and outcome-based reimbursements within Medicaid and CHIP. The purpose of the reduction is to encourage hospitals to improve patient quality and an incentive for hospitals to change behavior. All claims submitted to Medicaid through fee-for-service will be subject to the reduction. No change to the rule was made in response to this comment.

Comment: HHSC received a comment related to the new rule for Potentially Preventable Complications. The commenter recommends HHSC reduce the proposed payment adjustment to an amount that is more closely aligned with the rates paid to hospitals by the Medicaid program. It was suggested the adjustment be reduced to between .5% and 1.0% instead of 2.0% and 2.5%.

Response: HHSC disagrees with the commenter's recommendation. HHSC continues to work on increasing the emphasis on quality, efficiency, and initiatives to invest in quality and outcome-based reimbursements within Medicaid and CHIP. The purpose of the reduction is to encourage hospitals to improve patient quality and an incentive for hospitals to change behavior. All claims submitted to Medicaid through fee-for-service will be subject to the reduction. No change to the rule was made in response to this comment.

Comment: HHSC received a comment related to the new rules for Potentially Preventable Readmissions and Potentially Preventable Complications. The THA stated that subsection (g) of both rules establishes a policy that applies the reduction to all Medicaid claims. THA recommended HHSC clarify that the language in subsection (g) applies only to fee-for-service claims. With regard to managed-care services, THA expressed support for incorporating payment adjustments related to PPRs and PPCs into the capitated rate paid to managed-care organizations and allowing the MCOs and hospitals to negotiate, at arms-length, their payment terms and amounts.

Response: HHSC agrees with the commenter that only fee-for-service claims are subject to the reimbursement adjustment described in subsection (f) of the new rules. Therefore, HHSC has revised subsection (g) of these rules to clarify the policy in response to this comment. However, since HHSC is directed by SB 7 to establish quality-based measurements and payment systems in both fee-for-service and managed care, HHSC is incorporating the PPR and PPC payment adjustments in the managed-care context through its contracts with the managed-care organizations.

Additional change from proposed version: HHSC revised §354.1446(f) from the proposed version, to clarify that the payment adjustments are reductions in payment, by changing "2%" and "2.5%" to "-2%" and "-2.5%." This change was made for consistency with the way the adjustments are indicated in §354.1445(f).

DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1070, §354.1072

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301309
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 21, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 424-6900

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DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

1 TAC §354.1445, §354.1446

Statutory Authority

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1445. Potentially Preventable Readmissions.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to meet outcome and process measures relative to all Texas Medicaid hospitals regarding the rates of potentially preventable events.

(b) Definitions.

(1) Actual-to-Expected Ratio--The ratio of the actual number of potentially preventable readmission (PPR) chains compared to the expected number of PPR chains, where the expected number depends on the diagnosis code, the severity of illness, the patient age, and the presence or absence of a major mental health or substance abuse comorbidity.

(2) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period and measured using diagnosis-code relative weights, patient age, and the presence of a major mental health or substance abuse comorbidity.

(3) Claims during the reporting time period--Includes Medicaid traditional fee-for-service (FFS) and managed care inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting period;

(B) were adjudicated and approved for payment during the reporting period and the six-month grace period that immediately followed, except for claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare; and

(D) were not Medicaid spend-down claims.

(4) Clinically related--A requirement that the underlying reason for readmission be plausibly related to the care rendered during or immediately following the initial admission. A clinically related readmission occurs within a specified readmission time interval resulting from the process of care and treatment during the initial admission or from a lack of post admission follow-up, but not from unrelated events occurring after the initial admission.

(5) HHSC--The Health and Human Services Commission or its designee.

(6) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Health and Safety Code, including a general or special hospital as defined by §241.003, Health and Safety Code.

(7) Initial admission--In this section only, either an admission followed by one or more PPRs or an admission that was not followed by a PPR.

(8) Medicaid program--The medical assistance program established under Chapter 32, Human Resources Code.

(9) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of these events, which are more fully defined in §354.1070 of this title.

(10) Potentially preventable readmission (PPR)--A return hospitalization of a person within a period specified by HHSC that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by HHSC.

(11) Readmission chain--One or more PPRs that are clinically related to the same initial admission.

(12) Reporting time period--A state fiscal year (September through August) or other specified time frame as determined by HHSC.

(c) Calculating a PPR rate. Using claims during the reporting time period, HHSC will calculate an actual PPR rate and an expected PPR rate for each hospital that participates in the Medicaid program.

(1) The actual PPR rate is the number of readmission chains divided by the number of initial admissions, excluding readmissions that are not considered potentially preventable.

(2) The expected PPR rate is the expected number of readmission chains divided by the number of initial admissions, excluding readmissions that are not considered potentially preventable. The expected number of readmission chains is based on the hospital's case-mix relative to the case-mix of all Texas Medicaid hospitals during the reporting period.

(d) Comparing the PPR performance of all Medicaid hospitals. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPR rates.

(e) Reporting results of PPR rate calculations. HHSC will provide a confidential report to each hospital that participates in the Medicaid program regarding the hospital's performance with respect to potentially preventable readmissions, including the PPR rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPR ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -1%;

(2) A hospital with an actual-to-expected PPR ratio greater than 1.25 is subject to a reimbursement adjustment of -2%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid fee-for-service claims for dates of admission beginning on the earlier of:

(A) the effective date of this section or the first day of the month following the effective date if the section is not effective on the first day of the month; or

(B) the first day of the state fiscal year that is one year after the confidential report on which the reimbursement adjustments are based is posted on HHSC's or its designee's website and in the hospital-specific portal libraries.

(2) The reimbursement adjustments for a hospital will cease for dates of admission on the first day of the state fiscal year that is at least one year after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

§354.1446. Potentially Preventable Complications.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to achieve outcome and process measures relative to all Texas Medicaid hospitals that address the rates of potentially preventable events.

(b) Definitions.

(1) Actual to Expected Ratio--The ratio of actual potentially preventable complications (PPC) inpatient stays compared with expected PPC inpatient stays, where the expected number depends on the all patient refined-diagnosis related group (APR-DRG) and is adjusted for the patient's severity of illness.

(A) Actual PPC reported uses five measures of incidence and cost:

(i) PPC inpatient stays refer to the number of stays with at least one PPC.

(ii) PPC rate refers to the number of inpatient stays with at least one PPC divided by the total number of stays.

(iii) PPC count refers to the number of PPCs.

(iv) PPC per 100 inpatient stays refers to the count of PPCs per 100 stays.

(v) PPC cost determined by multiplying the estimated cost impact of a specific PPC by its frequency.

(B) Expected PPC results calculation is based on the statewide norms and is calculated from Medicaid traditional fee-for-service (FFS) and, if available, managed care data.

(2) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period. "Higher" case-mix refers to sicker patients who require more hospital resources.

(3) Inpatient claims during the reporting time period--Includes Medicaid traditional FFS and, if available, managed care data for inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting time period;

(B) were adjudicated and approved for payment during the reporting time period and the six-month grace period that immediately followed, except for such claims that had zero inpatient days;

(C) were not inpatient stays for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims for newborn or pediatric clients under 18 years of age; and

(F) were not claims for patients diagnosed with major metastatic cancer, organ transplants, human immunodeficiency virus (HIV), or major trauma.

(4) HHSC--The Health and Human Services Commission or its designee.

(5) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Health and Safety Code, including a general or special hospital as defined by §241.003, Health and Safety Code.

(6) Medicaid program--The medical assistance program established under Chapter 32, Human Resources Code.

(7) Norm--The Texas statewide average or the standard by which hospital PPC performance is compared.

(8) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events, which are more fully defined in §354.1070 of this title.

(9) Potentially preventable complications (PPC)--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(10) Reporting time period--A state fiscal year (September through August) or other specified time frame as determined by HHSC.

(c) Calculating a PPC rate. Using inpatient claims during the reporting time period, HHSC will calculate an actual PPC rate and an expected PPC rate for each hospital that participates in the Medicaid program.

(d) Comparing the PPC performance of all Medicaid hospitals. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPC rates.

(e) Reporting results of PPC rate calculations. HHSC will provide a confidential report to each hospital that participates in the Medicaid program regarding the hospital's performance with respect to potentially preventable complications, including the PPC rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPC ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -2%;

(2) A hospital with an actual-to-expected PPC ratio greater than 1.25 is subject to a reimbursement adjustment of -2.5%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid fee-for-service claims for dates of admission beginning November 1, 2013 and after.

(2) The reimbursement adjustments for a hospital will cease for dates of admission on the first day of the state fiscal year that is one year after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301310
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Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.8

The Railroad Commission of Texas (Commission) adopts amendments to §3.8, relating to Water Protection, with changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7555). The adopted amendments authorize certain recycling activities, clarify permitting of other recycling activities, and update the rule.

At its open meeting on February 28, 2012, the Commission directed staff to circulate draft proposed amendments, solicit informal comments, and hold a workshop with interested parties to get feedback on certain proposed amendments to the Commission's commercial recycling rules found in 16 TAC Chapter 4, Subchapter B. The existing rules in Chapter 4 contemplate two categories of commercial recycling facilities: mobile facilities and stationary facilities. Since adoption of the rules in 2006, the Commission has received an increasing number of applications for permits for facilities that fit neither category. Therefore, the Commission proposed to create a third category--a semi-mobile commercial recycling facility--to accommodate such requests. Commission staff subsequently posted the draft proposed amendments on the Commission's website with a request for informal comments and held a public workshop on March 16, 2012.

After consideration of the informal and workshop comments, the Commission proposed, and now adopts, amendments in §3.8 to authorize non-commercial recycling of fluids. In addition to these adopted amendments in §3.8, the Commission adopts concurrent amendments to Chapter 4, Subchapter B, in a separate rulemaking action. Certain comments addressed both proposals, while other comments addressed one or the other; therefore, the Commission notes that interested persons may wish to review both adoption preambles.

The Commission received 10 comments, one of which was from a government agency, Texas Parks and Wildlife ("TPWD"), four of which were from groups or associations (Texas Oil & Gas Association ("TxOGA"); Environmental Texas, Earthworks, Public Citizen, and Sustainable Energy and Economic Development

Coalition (submitted jointly; the "Joint Commenters"); Environmental Defense Fund; and Texas Water Recycling Association ("TWRA")), and five of which were from companies (Geologic Environmental; P&F Water Solution, LLC ("P&F"); Pioneer Natural Resources ("Pioneer"); Seven Seas Water Company, and R360 Environmental Solutions ("R360")).

On February 11, 2013, the Commission received notice from Seven Seas Water Company that it wished to withdraw its comments filed with the Commission on October 29, 2012.

COMMENT: The Environmental Defense Fund commended the Commission for addressing the issues raised in this rulemaking and encourages the Commission to continue in its efforts to deal proactively with challenges arising from evolving oil and gas technology and practices.

RESPONSE: The Commission agrees with this comment.

COMMENT: TPWD commented that the treatment levels to protect humans are not necessarily the same as those needed to protect terrestrial or aquatic habitat and it may be necessary to consider additional provisions beyond drinking water standards. TPWD further commented that other factors to consider beyond only drinking water standards include boron, sodium absorption ratio, barium, selenium, and phosphorus.

In similar comments, TxOGA requested that the drinking water standards be clearly identified as those from the Safe Drinking Water Act.

RESPONSE: The Commission agrees with TPWD's comment. Federal drinking water standards alone do not fully address all potential risks from treated fluids. As such, the Commission adopts a revised version of §3.8(d)(7)(B) and (C). The Commission establishes a tiered approach to the reuse of treated fluids. In order to remove any confusion on the type of fluids that are authorized to be recycled, the Commission has removed the use of the terms "produced water and/or hydraulic fracturing flowback fluid," as they relate to recycling, throughout the rule and replaced them with the more inclusive term "fluids."

Treated fluids reused in the wellbore of an oil, gas, geothermal, or service well are authorized by the Commission and no further individual permit is needed. The Commission also authorizes non-wellbore uses of treated fluids, except discharge to waters of the state which requires an individual permit by statute, as long as the reuse occurs pursuant to a permit issued by another state or federal agency. If the treatment of the fluids results in distilled water, the Commission authorizes any reuse other than discharge to water of the state. Lastly, the Commission will consider issuing a permit for other reuses, beyond those previously discussed, on a case by case basis based on the volume and source of the fluids, the anticipated constituents of concern, and the proposed reuse of the treated fluid. The Commission's adopted change renders TxOGA's comment moot.

COMMENT: In similar comments, Geologic Environmental commented that partial treatment of hydraulic fracturing flowback fluid and the subsequent land application or release to surface water should be allowed if the treated fluid meets the ambient quality of the receiving water as opposed to the proposed "national drinking water standard."

TxOGA commented the Commission should allow treated produced water and/or hydraulic fracturing flowback fluid to be discharge to surface water or be used to irrigate food crops.

P&F commented that Safe Drinking Water Act standards may exceed allowable standards for National Pollutant Discharge Elimination Systems (NPDES) permitting and the discharge of fluids should be allowed if authorized by an NPDES permit.

RESPONSE: The Commission disagrees with these comments. In Texas, the discharge of produced water and completion fluids, including hydraulic fracturing flowback water, treated or not, into waters of the United States, is prohibited by federal effluent limitations guidelines and general permits issued by the U.S. Environmental Protection Agency (EPA) under the National Pollutant Discharge Systems (NPDES) program under the federal Clean Water Act. It may be possible to obtain an individual NPDES permit from EPA for discharge of produced water and/or completion fluids to waters of the United States west of the 98th Meridian, as long as the water is for agricultural and wildlife beneficial use. The Commission is not banning the land application of treated fluids as discussed in the previous comment. The Commission has established a framework for reusing treated fluids as prescribed in §3.8(d)(7).

COMMENT: TxOGA and P&F requested clarification as to whether a permit is required when an operator conducts the recycling of produced water solely by and for the operator's purposes entirely on the operator's lease.

RESPONSE: The Commission agrees a permit is not required for an operator to conduct recycling of produced water on its own lease. In order to eliminate confusion, the Commission has simplified the framework of authorized fluid recycling and authorized fluid recycling pit. The Commission has combined the concepts of non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling and non-commercial centralized produced water and/or hydraulic fracturing fluid as found in the proposal into a new, more inclusive, term: "non-commercial fluid recycling." Non-commercial fluid recycling is defined as the recycling of wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), where the operator of the lease, drilling unit, or non-commercial disposal or injection well treats or contracts with a person for the treatment of the fluid and may accept such fluid from other leases or operators. Furthermore, the Commission has combined the concepts of non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit and non-commercial off-lease or centralized produced water and/or hydraulic fracturing flowback fluid recycling pit into the new term "non-commercial fluid recycling pit." Non-commercial fluid recycling pit is defined as a pit used in conjunction with one or more oil or gas leases or units, and is located on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit, or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, that is constructed, maintained, and operated by the operator of record of the lease or unit for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated

fluid that is a recyclable product. The new terms are more specific and attempt to eliminate ambiguity in the rule.

COMMENT: TxOGA requested further clarification as to whether an operator needs additional authority from the Commission to transport treated water to another site for beneficial reuse within its operations.

RESPONSE: The scenario described by TxOGA of an operator engaging in the recycling of its own waste would be classified as non-commercial fluid recycling under §3.8 because the generator of the waste is engaging in the recycling activity. The Commission agrees that no additional authority is needed for such non-commercial hauling of oil and gas wastes for non-commercial recycling. The Commission makes no change in response to this comment.

COMMENT: TxOGA recommended that the Commission delete the term "hydraulic fracturing flowback fluid" throughout the rule because hydraulic fracturing flowback fluid is just produced water and the language implying otherwise is confusing.

RESPONSE: Produced water and hydraulic fracturing flowback fluid are terms commonly used in oil and gas regulation. However, the Commission agrees that for the purposes of regulating wellbore fluid recycling, referring to hydraulic fracturing flowback fluid and produced water as separate waste streams is not necessary. The Commission therefore replaces the terms "hydraulic fracturing flowback fluid" and "produced water," throughout the new sections of the rule relating to authorized non-commercial recycling, with the more inclusive term, "fluid."

COMMENT: TxOGA and TWRA suggested the definition of "commercial recycling" found in proposed §3.8(a)(42) be consistent with the definitions found in Chapter 4, Subchapter B.

RESPONSE: The Commission agrees but has removed the term "commercial recycling" from §3.8, eliminating any inconsistencies.

COMMENT: TxOGA recommended that "produced water" be defined in §3.8 as "water produced in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in subsection (a)(30). Produced water is also referred to as 'brine,' 'saltwater,' 'hydraulic fracturing flowback fluid,' or 'formation fluid.'"

RESPONSE: The Commission disagrees that this change is necessary and declines to adopt the suggested definition of "produced water," instead using the more inclusive term "fluid" as it relates to authorized non-commercial recycling.

COMMENT: TxOGA recommended the term "recycle" as proposed in §3.8(a)(47) be replaced with "produced water reuse," which would be defined as "to process and use either treated or untreated produced water as a product for which there is an authorized use under this subchapter. For purposes of this section, injection of produced water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery under authorization and permit under §3.46 does not qualify as reuse."

RESPONSE: The Commission agrees in part with the comment. To be consistent with Chapter 4, Subchapter B, the Commission declines to adopt the term "produced water reuse" and delete the term "recycle," but has amended the definition of "recycle." Enhanced oil and gas recovery by fluid injection (EOR) has a long, productive and successful history in Texas. The Commission recognizes that what operators have been doing for generations with produced water for EOR in a literal sense likely fits within the elements of oil and gas waste recycling in this rulemaking. However, the Commission specifically excludes an operator's reuse of produced water for its EOR from this rule because EOR is regulated by §3.46 of this title, which the Commission administers consistent with the federal Underground Injection Control program under the Safe Drinking Water Act and because the Commission does not want to interrupt a long-standing successful and safe practice. As this comment relates to §3.8, the Commission has modified the definition of "recycle" to read: "To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title."

COMMENT: TxOGA commented that "recyclable product" as proposed in §3.8(a)(49) should be deleted from the rule.

RESPONSE: The Commission disagrees with this comment. Because the Commission declined to delete the term "recycle" as discussed in the previous comment, the term "recyclable product" still has a purpose in §3.8 and should be defined. The definition of recyclable product in Chapter 4, Subchapter B, has been slightly altered to clarify that a recyclable product may be created under either a permit or authorization from the Commission.

COMMENT: TxOGA recommended that §3.8(d)(3)(F) be simplified by removing the distinction between untreated wastes and recyclable products and inserting requirements for "pit contents".

RESPONSE: The Commission agrees with this comment and has revised the rule to reflect the suggested changes. References in §3.8(d)(3)(F) to untreated waste and recyclable product have been removed and §3.8(d)(3)(F) now consolidates the requirements for disposing of the solid pit contents that remain after dewatering a non-commercial fluid recycling pit in a single subsection.

COMMENT: TxOGA recommended that additional wording be added to §3.8, following the definitions, to clearly state that all commercial recycling operations require a permit under Chapter 4.

RESPONSE: The Commission disagrees with this comment and finds the rule is clear in this regard. Section 3.8(d)(7)(C)(ii) states all commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B. The Commission makes no change with regard to this comment.

COMMENT: TxOGA commented that the provisions in §3.8(f)(1)(A)(iv) and §3.8(f)(1)(C)(ix) are too stringent as the equipment needed to haul non-solid waste is not widely available and is significantly more expensive than other vehicles that would be appropriate for use. TxOGA commented that the certification by the waste hauler and the requirement in the rule that spillage shall be prevented are sufficient.

RESPONSE: The Commission partly agrees with this comment. The Commission has witnessed widespread hauling of oil and gas waste in inappropriate vehicles resulting in the spillage and leakage of oil and gas waste onto roads. As such, the certification by the waste hauler that its vehicles are designed not to leak during transportation has proven insufficient. The Commission finds the hauling of non-solid waste in open-topped containers, such as dump trucks, presents unacceptable risks of spillage or

leakage during transportation. The Commission finds additional guidance is needed in this area to ensure the proper hauling of oil and gas waste at all times. As such, the Commission includes requirements in the rule that vehicles used to haul non-solid oil and gas waste be designed to transport non-solid oil and gas waste. These changes implement Commission policy based on this history and the importance of proper containment of oil and gas waste during transportation.

COMMENT: The Joint Commenters recommended that the Commission consider mandating the recycling of produced water and/or hydraulic fracturing fluid.

RESPONSE: The Commission does not intend to require oil and gas operators to recycle such fluids at this time. With the adoption of this rulemaking, the Commission sets up a regulatory framework in which recycling is a viable alternative to disposal, but allows the operators to make their own water and waste management decisions. The Commission makes no change in regard to these comments.

COMMENT: TWRA requested clarification as to whether non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(43) is authorized in both §3.8 and Chapter 4, Subchapter B, and refers to a single operator and a single contractor dedicated to that operator on a single lease.

In a similar comment, Pioneer requested clarification on the definition of "lease" and "unit" as they apply to §3.8(d)(4)(G)(i).

RESPONSE: The Commission agrees in part with these comments. Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling, which has been replaced with the more inclusive term, "non-commercial fluid recycling," is authorized by §3.8, but falls outside the scope of Chapter 4, Subchapter B, as that subchapter addresses commercial recycling activities. The definition in proposed §3.8(a)(43) does not necessarily refer to a single lease or a single operator. In order to eliminate confusion, the Commission has provided additional guidance within the rule. Fluid recycling conducted on an oil and gas lease is authorized by §3.8, and is not limited by the number of operators or leases from which the fluid to be treated originated. The Commission declines to adopt a definition of "lease" or "unit" as these terms would be more appropriately defined in other Commission rules.

COMMENT: TWRA requested clarification as to whether non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(44) is the same type of facility referenced in Chapter 4, Subchapter B, Division 5, as off-lease or centralized water recycling.

RESPONSE: The Commission disagrees with this comment. Non-commercial fluid recycling as adopted in §3.8(a)(41) may be conducted by the generator of the waste or a contractor, but the recycling activity remains under the control of the generator of the waste and must occur on an oil and gas lease, drilling unit, or on the site of a non-commercial disposal or injection well. Off-lease commercial recycling of fluid, as discussed in Chapter 4, Subchapter B, Division 5, covers commercial recycling that is done under the control of a third-party, commercial entity off of an oil and gas lease, drilling unit, or non-commercial disposal or injection well and is outside the control of the generator of the waste.

COMMENT: TWRA requested clarification as to whether "lease" specifically refers to a lease as identified in Commission regulations and may contain multiple oil wells.

RESPONSE: The Commission agrees with this statement, but makes no change in response to the comment.

COMMENT: TWRA requested that the Commission consider that multiple gas wells require multiple leases but may have a common operator and one contractor operating on them.

RESPONSE: The Commission has considered this situation and agrees that additional guidance is warranted. The Commission has amended §3.8 to cover all non-commercial fluid recycling. Non-commercial fluid recycling must occur on a Commission designated oil or gas lease, drilling unit, or on the site of a non-commercial disposal or injection well, but is not limited to only one fluid generator or fluid originating from only one lease.

COMMENT: Geologic Environmental commented that the words "waste" and "oil and gas waste" should be removed and replaced with "material", "substance", or "fluid" as it should not be called a waste until it is destined for disposal. Geologic Environmental further commented that if the material is recycled, it should not be called a "waste."

RESPONSE: The Commission disagrees with this comment because the Commission considers oil and gas waste destined for recycling and recyclable product that has been abandoned to be waste. The Commission agrees that recyclable product put to a legitimate commercial use as authorized by §3.8 or pursuant to a permit issued under Chapter 4, Subchapter B, is not a waste. The Commission makes no change in response to this comment.

COMMENT: Geologic Environmental commented that two feet of freeboard on pits, as proposed in §3.8(d)(4)(G)(iv), is excessive and wasteful of storage space. The commenter recommended that the Commission replace the phrase "two feet of freeboard" with the phrase "adequate freeboard."

RESPONSE: The Commission disagrees with this comment. The Commission has authorized pits to store large volumes of treated fluid and untreated fluid to be treated, that if stored improperly or released into the environment will cause or allow pollution. As such, the Commission must establish standard pit construction and operation parameters to ensure that this waste will remain confined within the pit. Freeboard requirements are one of these parameters. Two feet of freeboard is a verifiable, reasonable standard to assure that significant rain events will not result in the fluid in the pit overtopping the berms and subsequently escaping into the environment. The Commission makes no change in response to this comment.

COMMENT: Geologic Environmental commented that pits should not be held to the same standard as Subtitle D landfills, and the $1x10^{-7}$ centimeter per second permeability standard is excessive and should be eliminated.

RESPONSE: The Commission disagrees with this comment. The Commission has authorized pits to store large volumes of treated and untreated fluids that if stored improperly or released into the environment will cause or allow pollution. As such, the Commission must establish standard pit construction and operation parameters to ensure that this waste will remain confined within the pit. A minimum liner permeability standard is one of these parameters. The permeability standard of $1x10^{-7}$ centimeters per second or less for the liner is reasonable and ensures the liner is capable of meeting the Commission's goal

of preventing pollution. The Commission makes no change in response to this comment.

COMMENT: Pioneer requested clarification and the possible deletion of the phrase "for use in a new well" in the definition of "fresh makeup water pit" in §3.8(a)(9).

RESPONSE: The Commission agrees with this comment and removed the phrase "for use in a new well" from the definition of a fresh makeup water pit in §3.8(a)(9).

COMMENT: Pioneer commented that the definition of hydraulic fracturing flowback fluid in §3.8 is slightly different than the definition in Chapter 4, Subchapter B, and requested that the two definitions be identical.

RESPONSE: The Commission has deleted the term "hydraulic fracturing flowback fluid" as proposed in §3.8(a)(41) of the proposal and replaced it with the more inclusive term "fluid."

COMMENT: Pioneer requested consistency in the use of the term "off-lease." The term "off-lease" is used in §3.8(a)(46) but is not used in other places throughout the rule, including the definition of non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling in proposed §3.8(a)(44), or the section regarding prohibited pits.

RESPONSE: The Commission agrees with this comment and has removed "off-lease" from §3.8.

COMMENT: TxOGA and Pioneer request clarification on the definition and applicability of 100-year flood plain. In the definition for 100-year flood plain, the commenters requested that the source of the flood plain data be included in the definition, specifically Federal Emergency Management Administration (FEMA) regulatory maps. The commenters also requested clarification that the requirements proposed in §3.8(d)(4)(H)(iv)(I) regarding siting of pits in a 100-year flood plain not be retroactive to existing pits. Lastly, the commenter requests that provisions for exceptions to the 100-year flood plain siting requirement be incorporated into the rule.

RESPONSE: The Commission agrees that FEMA regulatory maps are the preferred source for obtaining 100-year flood plain data. However, not all counties within the state have been mapped by FEMA. As such, other sources, such as United States Department of Agriculture soil maps, are also suitable alternative sources of flood plain data. The Commission adopts a definition of "100-year flood plain" that makes acceptable sources of the floodplain data clear.

The Commission agrees that the proposed provision prohibiting authorized pits within a 100-year flood plain should only apply to pits constructed after the effective date of this rule. Section 3.8 exists to protect surface and subsurface water. Regular storage of quantities of oil and gas waste in flood-prone areas heightens risk to water, and the Commission has realized this risk in the past. Commission experience and the potential for pollution due to chemicals of concern in the waste, its proximity to surface and subsurface water, and the unpredictability of rain events justify the provisions in the proposed rule. However, the Commission adopts the rule with a change to allow the district director to approve such pit construction in a 100-year flood plain if the operator demonstrates the pit is constructed in a manner that will confine fluids at all times.

COMMENT: Pioneer requested that hydrostatic test water be included under the descriptions of water and other materials that can be stored in an authorized pit, as referenced in §3.8(d)(4).

RESPONSE: The Commission declines to incorporate this request. Section 3.8 is being amended for only limited purposes. The storage of hydrostatic test water is outside the scope of this rulemaking. The Commission makes no change in response to this comment.

COMMENT: Pioneer made several comments on §3.8(d)(7) regarding recycling. Pioneer recommended that the Commission make the language in proposed §3.8(d)(7)(B)(i) and (C)(i)(I), and (B)(ii) and (C)(i)(II) consistent. In §3.8(d)(7)(B)(i), the phrase "or other oilfield fluid to be used in the wellbore" is used, and in §3.8(d)(7)(C)(i), the phrase "or as another type of oilfield fluid to be used in the wellbore." There are slight differences in §3.8(d)(7)(B)(ii) and (C)(i)(II).

In proposed subsection (d)(7)(B)(i) regarding partial treatment, Pioneer suggested that specifying that no other permit be required "for the recycling process" may be helpful to distinguish the recycling process from the pit permitting process. Pioneer commented that it would be helpful to explicitly indicate that a pit permit, obtained by submitting a complete Form H-11, is the specific permit that an operator would be required to obtain.

Pioneer also requested clarification on the complete treatment scenario. Pioneer requested clarification on how an operator would demonstrate compliance with the Safe Drinking Water Act, including direction on sampling parameters, frequency, if the reporting must be filed with the Commission, and what documentation must be kept.

RESPONSE: In response to multiple comments received on this proposed wording, the Commission has revised the structure of the rule as it relates to the reuse of treated fluids. Adopted §3.8(d)(7) addresses Pioneer's comments by establishing a tiered approach to the reuse of treated fluids resulting from non-commercial fluid recycling. The language states that: (1) if the treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well, no other permit is required; (2) if the treated fluid is reused in any manner other than discharge to waters of the state and another state or federal agency has permitted such reuse, no other permit from the Commission is required; and (3) if the treatment of the fluid results in distilled water, the fluid may be reused in any manner other than discharge to water of the state with no other permit required.

COMMENT: Pioneer requested clarification whether §3.8(f)(1) excludes a waste hauler from transporting untreated waste off-lease.

RESPONSE: The Commission agrees that §3.8(f)(1) does not exclude a waste hauler from transporting untreated waste off-lease. The Commission makes no change in response to this comment.

COMMENT: R360 commented that unpermitted and standardless pit storage and disposal of produced water and hydraulic fracturing flowback fluid should not be allowed.

RESPONSE: The Commission agrees with this comment and finds the requirements for periodic inspections of non-commercial fluid recycling pits addressed in §3.8(d)(4)(G) should be more detailed. The proposed amendments to §3.8 did generally establish standards for pit storage, including monitoring. However, in response to this comment, the Commission adds to the rule language to clarify that the operator has the option to monitor the pit by emptying it and performing a visual inspection

of the liner integrity on an annual basis, or to double-line the pit and install and monitor a leak detection system. The Commission also clarifies that before a non-commercial fluid recycling pit can be put into operation, the operator on whose lease the pit is located must notify the appropriate district office of the location of the pit, the dimensions and maximum capacity of the pit, and provide a signed statement that the operator has written permission to construct and use the pit from the surface owner of the tract upon which the pit is located. Lastly, the Commission clarifies that the operator of a non-commercial fluid recycling pit notify the district office of the location, dimension, and volume of the pit and the operator provides a signed statement that it has written permission from the surface owner of the tract upon which the pit is located for the construction and use of the pit. These requirements are conditions in the Commission's existing recycling pit permits. Now that these pits are authorized by rule (i.e., the operator no longer needs to apply for a permit), the Commission adds these conditions to the rule. The Commission further clarifies the pit shall only store fluid if the monitoring procedures do not detect liner failure.

The Commission also establishes additional standards in §3.8(d)(4)(H)(iv) to require that all authorized pits not be constructed in a 100-year flood plain unless approved by the district director, as previously discussed.

The Commission also clarifies that a bottomless above-ground fluid storage structure in which only a synthetic liner separates the fluid from the ground surface is considered a pit under §3.8 and must either be authorized or permitted in accordance with the provisions of §3.8.

The Commission amends existing definitions and adds new definitions in §3.8(a). The Commission amends the definition of collecting pit to delete the phrase "prior to disposal at a tidal disposal facility, or pit used for storage of saltwater" because tidal discharge is now prohibited.

As previously discussed, the Commission adopts wording to delete the phrase "for use in a new well" from the definition of "fresh makeup water pit," as it added confusion to the intent of the definition.

The Commission amends the definition of a "skimming pit" to delete the reference to tidal disposal, which is now prohibited.

The Commission adds new definitions for the terms "non-commercial fluid recycling," "non-commercial fluid recycling pit," "recycle," "treated fluid," "recyclable product," "100-year flood plain," and "distilled water." These definitions, some of which are adopted with changes as previously discussed, are consistent with the definitions of these terms as adopted in the concurrent Chapter 4 amendments.

The Commission amends §3.8(d)(2) to delete a reference to current §3.8(d)(8), which is being deleted.

The Commission amends subsection (d)(3) to add new subparagraph (F). The new subparagraph authorizes the burial of solids from a non-commercial fluid recycling pit within the dewatered pit. The Commission redesignates existing subparagraph (F) as subparagraph (G).

The Commission amends subsection (d)(4), relating to authorized pits, to include non-commercial fluid recycling pits. The amendment authorizes such a pit provided that certain conditions are met, among them, a person shall not deposit or cause to be deposited into a non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those authorized in §3.8(a)(42); the pit is sufficiently large to ensure adequate storage capacity and freeboard taking into account anticipated precipitation; the pit is designed to prevent stormwater runoff from entering the pit; a freeboard of at least two feet is maintained at all times; the pit is lined and the liner designed and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit; precautions are taken and procedures installed to ensure the integrity of the liner; the pit is inspected periodically by the operator for compliance with the applicable provisions of this section; and the operator notifies the appropriate district office of the location, dimension, and volume of the pit and the operator provides a signed statement that it has written permission from the surface owner of the tract upon which the pit is located for the construction and use of the pit.

The Commission redesignates and amends subsection (d)(4)(H), currently subsection (d)(4)(G), relating to backfill requirements, to include requirements for backfilling authorized non-commercial fluid recycling pits. The Commission also adopts new subparagraph (H)(iv)(I) and (II) to require that all authorized pits be constructed, used, operated, and maintained at all times so as to prevent pollution. The Commission adopts a requirement that non-commercial fluid recycling pits and other authorized pits not be located in a 100-year floodplain unless specifically approved by the district director, as previously discussed. The adopted amendments also state that, in the event of an unauthorized discharge from any pit authorized by this paragraph, the operator must take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.

In August 1998, the Commission implemented various regulatory cost-cutting measures. One of these measures was to increase the term of a minor permit from 30 to 60 days. Accordingly, the Commission amends subsection (d)(6)(G), relating to minor permits, to update the term of such permits from 30 days to 60 days.

The Commission adopts new subsection (d)(7), relating to recycling. New subparagraph (A) states that, except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit. Subparagraph (B), adopted with changes as previously discussed, authorizes the tiered reuse structure of treated fluids resulting from non-commercial fluid recycling. The language states that: (1) if the treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well, no other permit is required; (2) if the treated fluid is reused in any manner other than discharge to waters of the state and another state or federal agency has permitted such reuse, no other permit from the Commission is required; and (3) if the treatment of the fluid results in distilled water, the fluid may be reused in any manner other than discharge to water of the state with no other permit required.

The Commission deletes language in current subsection (d)(7)(A) - (D) and (8), relating to existing permits and pits, because with this rulemaking, the language is obsolete. The Commission renumbers the remaining paragraph.

The Commission adopts new subsection (d)(7)(C), relating to permitted recycling, with changes previously discussed. The new language states that treated fluid may be reused in any manner other than those authorized in subsection (d)(7)(B) pursuant

to terms of a permit issued by the director, which will be reviewed on a case by case basis. In reviewing the application, the volume and source of the fluid, the location, and the proposed reuse will all be considered. This subparagraph further clarifies that all commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B of this title (relating to Commercial Recycling).

The Commission amends subsection (f), relating to oil and gas waste haulers, to clarify that a waste hauler permit is not required for non-commercial hauling of oil and gas wastes for non-commercial recycling.

The Commission amends subsection (f)(1)(A)(iv) to include a requirement that the certification required in subsection (f)(1)(A) include a statement that vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste. The Commission adopts conforming amendments in subsection (f)(1)(A)(ix).

The Commission amends subsection (f)(2)(A) to add references to commercial recycling facilities where appropriate and subsection (g) to add references to recycling facilities where appropriate.

The Commission amends subsection (j), relating to consistency with the Texas Coastal Management Program, pursuant to Senate Bill 656, enacted by the 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the council's duties to the Texas General Land Office.

The Commission adopts amendments to §3.8 under Texas Natural Resources Code, §33.205 and §33.2053, which direct the Commission to comply with the goals and policies of the Coastal Management Program when issuing certain types of permits; Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109, are affected by the adopted amendments.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

Issued in Austin, Texas, on March 26, 2013.

§3.8. Water Protection.

(a) The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Basic sediment pit--Pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank. Basic sediment pits were formerly referred to as burn pits.

(2) Brine pit--Pit used for storage of brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility.

(3) Collecting pit--Pit used for storage of saltwater or other oil and gas wastes prior to disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a skimming pit.

(4) Completion/workover pit--Pit used for storage or disposal of spent completion fluids, workover fluids and drilling fluid, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed or worked over.

(5) Drilling fluid disposal pit--Pit, other than a reserve pit, used for disposal of spent drilling fluid.

(6) Drilling fluid storage pit--Pit used for storage of drilling fluid which is not currently being used but which will be used in future drilling operations. Drilling fluid storage pits are often centrally located among several leases.

(7) Emergency saltwater storage pit--Pit used for storage of produced saltwater for limited period of time. Use of the pit is necessitated by a temporary shutdown of disposal well or fluid injection well and/or associated equipment, by temporary overflow of saltwater storage tanks on a producing lease or by a producing well loading up with formation fluids such that the well may die. Emergency saltwater storage pits may sometimes be referred to as emergency pits or blowdown pits.

(8) Flare pit--Pit which contains a flare and which is used for temporary storage of liquid hydrocarbons which are sent to the flare during equipment malfunction but which are not burned. A flare pit is used in conjunction with a gasoline plant, natural gas processing plant, pressure maintenance or repressurizing plant, tank battery, or a well.

(9) Fresh makeup water pit--Pit used in conjunction with a drilling rig for storage of fresh water used to make up drilling fluid or hydraulic fracturing fluid.

(10) Gas plant evaporation/retention pit--Pit used for storage or disposal of cooling tower blowdown, water condensed from natural gas, and other wastewater generated at gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants.

(11) Mud circulation pit--Pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.

(12) Reserve pit--Pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash

water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

(13) Saltwater disposal pit--Pit used for disposal of produced saltwater.

(14) Skimming pit--Pit used for skimming oil off saltwater prior to disposal of saltwater at a disposal well or fluid injection well.

(15) Washout pit--Pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.

(16) Water condensate pit--Pit used in conjunction with a gas pipeline drip or gas compressor station for storage or disposal of fresh water condensed from natural gas.

(17) Generator--Person who generates oil and gas wastes.

(18) Carrier--Person who transports oil and gas wastes generated by a generator. A carrier of another person's oil and gas wastes may be a generator of his own oil and gas wastes.

(19) Receiver--Person who stores, handles, treats, reclaims, or disposes of oil and gas wastes generated by a generator. A receiver of another person's oil and gas wastes may be a generator of his own oil and gas wastes.

(20) Director--Director of the Oil and Gas Division or his staff delegate designated in writing by the director of the Oil and Gas Division or the commission.

(21) Person--Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) Affected person--Person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(23) To dewater--To remove the free water.

(24) To dispose--To engage in any act of disposal subject to regulation by the commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.

(25) Landfarming--A waste management practice in which oil and gas wastes are mixed with or applied to the land surface in such a manner that the waste will not migrate off the landfarmed area.

(26) Oil and gas wastes--Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in paragraph (30) of this subsection, and materials to be disposed of or reclaimed which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).

(27) Oil field fluids--Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes.

(28) Pollution of surface or subsurface water--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(29) Surface or subsurface water--Groundwater, percolating or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(30) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants

if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901, et seq.).

(31) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term "mined brine" does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.

(32) Brine mining pit--Pit, other than a fresh mining water pit, used in connection with activities associated with the solution mining of brine. Most brine mining pits are used to store mined brine.

(33) Fresh mining water pit--Pit used in conjunction with a brine mining injection well for storage of water used for solution mining of brine.

(34) Inert wastes--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, fiberglass, and trash.

(35) Coastal zone--The area within the boundary established in Title 31, Texas Administrative Code, §503.1 (Coastal Management Program Boundary).

(36) Coastal management program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at Title 31, Texas Administrative Code, Chapters 501, 505, and 506.

(37) Coastal natural resource area (CNRA)--One of the following areas defined in Texas Natural Resources Code, §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.

(38) Coastal waters--Waters under tidal influence and waters of the open Gulf of Mexico.

(39) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code, §33.203.

(40) Practicable--Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity.

(41) Non-commercial fluid recycling--The recycling of fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), where the operator of the lease, or drilling unit, or non-commercial disposal or injection well treats or contracts with a person for the treatment of the fluid, and may accept such fluid from other leases and or operators.

(42) Non-commercial fluid recycling pit--Pit used in conjunction with one or more oil or gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or unit and is located on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit, or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid.

(43) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title.

(44) Treated fluid-Fluid that has been treated using water treatment technologies to remove impurities such that the treated fluid can be reused or recycled. Treated fluid is not a waste but may become a waste if it is abandoned or disposed of rather than reused or recycled.

(45) Recyclable product--A reusable material as defined in §4.204(12) of this title (relating to Definitions).

(46) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year, as determined from maps or other data from the Federal Emergency Management Administration (FEMA), or, if not mapped by FEMA, from the United States Department of Agriculture soil maps.

(47) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.

(b) No pollution. No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.

(c) Exploratory wells. Any oil, gas, or geothermal resource well or well drilled for exploratory purposes shall be governed by the provisions of statewide or field rules which are applicable and pertain to the drilling, safety, casing, production, abandoning, and plugging of wells.

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.

(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwa-

ter storage pits; collecting pits; skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; and gas plant evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.

(3) Authorized disposal methods.

(A) Fresh water condensate. A person may, without a permit, dispose of fresh water which has been condensed from natural gas and collected at gas pipeline drips or gas compressor stations, provided the disposal is by a method other than disposal into surface water of the state.

(B) Inert wastes. A person may, without a permit, dispose of inert and essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire, provided the disposal is by a method other than disposal into surface water of the state.

(C) Low chloride drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming, provided the wastes are disposed of on the same lease where they are generated, and provided the person has the written permission of the surface owner of the tract where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams per liter (mg/liter) or less; drill cuttings, sands, and silts obtained while using water base drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site.

(D) Other drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by burial, provided the wastes are disposed of at the same well site where they are generated: water base drilling fluid which had a chloride concentration in excess of 3,000 mg/liter but which have been dewatered; drill cuttings, sands, and silts obtained while using oil base drilling fluids or water base drilling fluids with a chloride concentration in excess of 3,000 mg/liter; and those drilling fluids and wastes allowed to be landfarmed without a permit.

(E) Completion/workover pit wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a completion/workover pit, provided the wastes have been dewatered, and provided the wastes are disposed of at the same well site where they are generated: spent completion fluids, workover fluids, and the materials cleaned out of the wellbore of a well being completed or worked over.

(F) Contents of non-commercial fluid recycling pit. A person may, without a permit, dispose of the solids from a non-commercial fluid recycling pit by burial in the pit, provided the pit has been dewatered.

(G) Effect on backfilling. A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.

(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits on the following conditions.

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:

(i) drilling fluids, whether fresh water base, saltwater base, or oil base;

(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;

(iii) wash water used for cleaning drill pipe and other equipment at the well site;

(iv) drill stem test fluids; and

(v) blowout preventer test fluids.

(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.

(C) Basic sediment pits. A person shall not deposit or cause to be deposited into a basic sediment pit any oil field fluids or oil and gas wastes other than basic sediment removed from a production vessel or from the bottom of an oil storage tank. Although a person may store basic sediment in a basic sediment pit, a person may not deposit oil or free saltwater in the pit. The total capacity of a basic sediment pit shall not exceed a capacity of 50 barrels. The area covered by a basic sediment pit shall not exceed 250 square feet.

(D) Flare pits. A person shall not deposit or cause to be deposited into a flare pit any oil field fluids or oil and gas wastes other than the hydrocarbons designed to go to the flare during upset conditions at the well, tank battery, or gas plant where the pit is located. A person shall not store liquid hydrocarbons in a flare pit for more than 48 hours at a time.

(E) Fresh makeup water pits and fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.

(F) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.

(G) Non-commercial fluid recycling pits.

(i) A person shall not deposit or cause to be deposited into a non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those fluids described in subsection (a)(42) of this section.

(ii) All pits shall be sufficiently large to ensure adequate storage capacity and freeboard taking into account anticipated precipitation.

(iii) All pits shall be designed to prevent stormwater runoff from entering the pit. If a pit is constructed with a dike or berm, the height, slope, and construction material of such dike or berm shall be such that it is structurally sound and does not allow seepage.

(iv) A freeboard of at least two feet shall be maintained at all times.

(v) All pits shall be lined. The liner shall be designed, constructed, and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit. The liner shall be installed according to standard industry practices, shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the pit. All liners shall have a hydraulic conductivity that is 1.0×10^{-7} cm/sec or less. A liner may be constructed of either natural or synthetic materials.

(I) Procedures shall be in place to routinely monitor the integrity of the liner of pit. If liner failure is discovered at any time, the pit shall be emptied and the liner repaired prior to placing the pit back in service. Acceptable monitoring procedures include an annual visual inspection of the pit liner or the installation of a double liner and leak detection system. Alternative monitoring procedures may be approved by the director if the operator demonstrates that the alternative is at least equivalent in the protection of surface and subsurface water as the provisions of this section.

(II) The liner of a pit with a single liner shall be inspected annually to ensure that the liner has not failed. This inspection shall be completed by emptying the pit and visually inspecting the liner.

(III) If the operator does not propose to empty the pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system must be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

(IV) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to commission personnel upon request.

(vi) The operator of the pit shall provide written notification to the district director prior to construction of the pit, or prior to the use of an existing pit as a non-commercial fluid recycling pit. Such notification shall include:

(I) the location of the pit including the lease name and number or drilling permit number and the latitude and longitude;

(II) the dimensions and maximum capacity of the pit; and

(III) a signed statement that the operator has written permission from the surface owner of the tract upon which the pit is located for construction and use of the pit for such purpose.

(vii) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(viii) The pit shall be inspected periodically by the operator for compliance with the applicable provisions of this section.

(H) Backfill requirements.

(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.

(I) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations.

(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.

(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.

(IV) Basic sediment pits, flare pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits.

(V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered.

(ii) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, non-commercial fluid recycling pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause (i) of this subparagraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.

(iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit backfill the pit sooner than the time prescribed by clause (i) of this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

(iv) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit whose use or maintenance is authorized by this paragraph, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.

(I) Unless otherwise approved by the district director after a showing that the fluids will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in subsection (a) of this section. The operator may request a hearing if the district director denies approval of the request to construct a pit within a 100-year flood plain.

(II) In the event of an unauthorized discharge from any pit authorized by this paragraph, the operator shall take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.

(5) Responsibility for disposal.

(A) Permit required. No generator or receiver may knowingly utilize the services of a carrier to transport oil and gas wastes if the carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No carrier may knowingly utilize the services of a second carrier to transport oil and gas wastes if the second carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No generator or carrier may knowingly utilize the services of a receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. No receiver may knowingly utilize the services of a second receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the second receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. Any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver has all permits required by the Oil and Gas Division to transport, store, handle, treat, reclaim, or dispose of oil and gas wastes.

(B) Improper disposal prohibited. No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

(i) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and

(ii) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.

(6) Permits.

(A) Standards for permit issuance. A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the commission determines that the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water. A permit to maintain or use any unlined brine mining pit or any unlined pit, other than an emergency saltwater storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters may only be issued if the commission determines that the applicant has conclusively shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit, or because the surface or subsurface water in the area of the pit would be physically isolated by naturally occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit. Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to maintain or use a pit will state the conditions under which the pit may be operated, including the conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners.

(B) Application. An application for a permit to maintain or use a pit or to dispose of oil and gas wastes shall be filed with the commission in Austin. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the original application is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the commission on the date it is received by the commission in Austin. When a commission-prescribed application form exists, an applicant shall make application on the prescribed form according to the instructions on such form. The director may require the applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.

(C) Notice. The applicant shall give notice of the permit application to the surface owners of the tract upon which the pit will be located or upon which the disposal will take place. When the tract upon which the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official. Where disposal is to be by discharge into a watercourse other than the Gulf of Mexico or a bay, the applicant shall also give notice to the surface owners of each waterfront tract between the discharge point and 1/2 mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within 1/2 mile of the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall determine the form of the notice to be published. The notice shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin. The director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required by this subparagraph to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.

(D) Protests and hearings. If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing. If the director has reason to believe that a person entitled to notice of an application has not received such

notice within 15 days of the date an application is filed with the commission, then the director shall not take action on the application until reasonable efforts have been made to give such person notice of the application and an opportunity to file a protest to the application. If the director determines that a hearing is in the public interest, a hearing shall be held. A hearing on an application shall be held after the commission provides notice of hearing to all affected persons, or other persons or governmental entities who express an interest in the application in writing. If no protest from an affected person is received by the commission, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the hearings examiner shall recommend a final action by the commission.

(E) Modification, suspension, and termination. A permit granted pursuant to this subsection, may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(i) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(ii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(iii) the permittee has violated the terms and conditions of the permit or commission rules;

(iv) the permittee misrepresented any material fact during the permit issuance process;

(v) the permittee failed to give the notice required by the commission during the permit issuance process;

(vi) a material change of conditions has occurred in the permitted operations, or the information provided in the application has changed materially.

(F) Emergency permits. If the director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the director may issue an emergency permit. An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the commission in the appropriate district office. Notice of the application is not required. If warranted by the nature of the emergency, the director may issue an emergency permit based upon a verbal application, or the director may verbally authorize an activity before issuing a written permit authorizing that activity. An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of an emergency permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.

(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.

(7) Recycling.

(A) Prohibited recycling. Except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit.

(B) Authorized recycling.

(i) No permit is required if treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment(s), or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well.

(ii) Treated fluid may be reused in any other manner, other than discharge to waters of the state, without a permit from the Commission, provided the reuse occurs pursuant to a permit issued by another state or federal agency.

(iii) If treatment of the fluid results in distilled water, no permit is required to use the resulting distilled water in any manner other than discharge to waters of the state.

(iv) Fluid that meets the requirements of clause (i), (ii), or (iii) of this subparagraph is a recyclable product.

(C) Permitted recycling.

(i) Treated fluid may be reused in any manner, other than the manner authorized by subparagraph (B) of this paragraph, pursuant to a permit issued by the director on a case-by-case basis, taking into account the source of the fluids, the anticipated constituents of concern, the volume of fluids, the location, and the proposed reuse of the treated fluids. Fluid that meets the requirements of a permit issued under this clause is a recyclable product.

(ii) All commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B of this title (relating to Commercial Recycling).

(8) Used oil. Used oil as defined in §3.98 of this title, shall be managed in accordance with the provisions of 40 CFR, Part 279.

(e) Pollution prevention (reference Order Number 20-59,200, effective May 1, 1969).

(1) The operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage the aquatic life therein.

(2) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. Particularly, the following procedures shall be utilized to prevent pollution.

(A) The disposal of liquid waste material into the Texas offshore and adjacent estuarine zones shall be limited to saltwater and other materials which have been treated, when necessary, for the removal of constituents which may be harmful to aquatic life or injurious to life or property.

(B) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.

(C) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.

(D) Solid combustible waste may be burned and the ashes may be disposed of into Texas offshore and adjacent estuarine zones. Solid wastes such as cans, bottles, or any form of trash must be transported to shore in appropriate containers. Edible garbage, which may be consumed by aquatic life without harm, may be disposed of into Texas offshore and adjacent estuarine zones.

(E) Drilling muds which contain oil shall be transported to shore or a designated area for disposal. Only oil-free cutting and fluids from mud systems may be disposed of into Texas offshore and adjacent estuarine zones at or near the surface.

(F) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent emission of pollutants to the Texas offshore and adjacent estuarine zones prior to proper treatment.

(G) All deck areas on producing platforms subject to contamination shall be either curbed and connected by drain to a collecting tank or sump in which the containment will be treated and disposed of without causing hazard or pollution, or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks or sumps designed to accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps to prevent overflow.

(H) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action or notification shall be made to eliminate further pollution. The operator shall then transmit the report to the appropriate commission district office.

(I) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.

(3) The commission may suspend producing and/or drilling operations from any facility when it appears that the provisions of this rule are being violated.

(4) (Reference Order Number 20-60,214, effective October 1, 1970.) The foregoing provisions of Rule 8(D) shall also be required and enforced as to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.

(f) Oil and gas waste haulers.

(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title is excluded from this subsection. This subsection is not applicable to the non-commercial hauling of oil and gas wastes for non-commercial recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling.

(A) Application for an oil and gas waste hauler permit will be made on the commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied by:

(i) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements) (Statewide Rule 78);

(ii) vehicle identification information to support commission issuance of an approved vehicle list;

(iii) an affidavit from the operator of each commission-permitted disposal system the hauler intends to use stating that the hauler has permission to use the system; and

(iv) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.

(B) An oil and gas waste hauler permit may be issued for a term not to exceed one year, subject to renewal by the filing of an application for permit renewal and the required application fee for the next permit period. The term of an oil and gas waste hauler permit will be established in accordance with a schedule prescribed by the director to allow for the orderly and timely renewal of oil and gas waste hauler permits on a staggered basis.

(C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:

(i) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.

(ii) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. (For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.)

(iii) Each vehicle must carry a copy of the permit including those parts of the commission-issued attachments listing approved vehicles and commission-permitted disposal systems that are relevant to that vehicle's activities. This permit authority is limited to those vehicles shown on the commission-issued list of approved vehicles.

(iv) This permit is issued pursuant to the information furnished on the application form, and any change in conditions must be reported to the commission on an amended application form. The permit authority will be revised as required by the amended application.

(v) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.

(vi) This permit authorizes the permittee to use commission-permitted disposal systems for which the permittee has submitted affidavits from the disposal system operators stating that the permittee has permission to use the systems. These disposal systems are listed as an attachment to the permit. This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the commission without submitting an affidavit from the disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title, provided the shipment is accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a disposal facility permitted by another agency or another state provided the commission has granted separate authorization for the disposal.

(vii) The permittee must file an application for a renewal permit, using the permittee's assigned permit number, before the expiration date specified in this permit.

(viii) The permittee must compile and keep current a list of all persons by whom the permittee is hired to haul and dispose of oil and gas waste, and furnish such list to the commission upon request.

(ix) Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.

(x) Each vehicle must be made available for inspection upon request by commission personnel.

(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.

(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:

(i) identity of the property from which the oil and gas waste is hauled;

(ii) identity of the disposal system or commercial recycling facility to which the oil and gas waste is delivered;

(iii) the type and volume of oil and gas waste received by the hauler at the property where it was generated; and

(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system or commercial recycling facility.

(B) Such record shall be kept open for the inspection of the commission or its representatives.

(C) Such record shall be kept on file for a period of three years from the date of operation and recordation.

(g) Recordkeeping.

(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off-lease disposal or recycling facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:

(A) identity of the property from which the oil and gas waste is hauled;

(B) identity of the disposal system or recycling facility to which the oil and gas waste is delivered;

(C) name and address of the hauler, and permit number (WHP number) if applicable; and

(D) type and volume of oil and gas waste transported each day to disposal or recycling.

(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the oil and gas waste hauler, provided the run tickets or other billing information contain all the information required by paragraph (1) of this subsection.

(3) Examination and reporting. The person keeping any records required by this subsection shall make the records available for examination and copying by members and employees of the commission during reasonable working hours. Upon request of the commission, the person keeping the records shall file such records with the commission.

(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) or violation of this section.

(i) Coordination between the Railroad Commission of Texas and the Texas Commission on Environmental Quality or its successor agencies. The Railroad Commission and the Texas Commission on Environmental Quality both have adopted by rule a memorandum of understanding regarding the division of jurisdiction between the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil. The memorandum of understanding is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection apply only to activities that occur in the coastal zone and that are subject to the CMP rules.

(1) Specific Policies.

(A) Disposal of Oil and Gas Waste in Pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone:

(i) no commercial oil and gas waste disposal pit constructed after the effective date of this subsection shall be located in any CNRA; and

(ii) all oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(B) Discharge of Oil and Gas Waste to Surface Waters. The following provisions apply to discharges of oil and gas waste that occur in the coastal zone:

(i) no discharge of oil and gas waste to surface waters may cause a violation of the Texas Surface Water Quality Standards adopted by the Texas Commission on Environmental Quality or its successor agencies and codified at Title 30, Texas Administrative Code, Chapter 307;

(ii) in determining whether any permit to discharge oil and gas waste that is comprised, in whole or in part, of produced water is consistent with the goals and policies of the CMP, the commission shall consider the effects of salinity from the discharge;

(iii) to the greatest extent practicable, in the case of any oil and gas exploration, production, or development operation from which an oil and gas waste discharge commences after the effective date this subsection, the outfall for the discharge shall not be located where the discharge will adversely affect any critical area;

(iv) in the case of any oil and gas exploration, production, or development operation with an oil and gas waste discharge permitted prior to the effective date of this subsection that adversely affects any critical area, the outfall for the discharge shall either:

(I) be relocated within two years after the effective date of this subsection, so that, to the greatest extent practicable, the discharge does not adversely affect any critical area; or

(II) the discharge shall be discontinued; and

(v) the commission shall notify the Texas Commission on Environmental Quality or its successor agencies and the Texas Parks and Wildlife Department upon receipt of an application for a permit to discharge oil and gas waste that is comprised, in whole or in part, of produced waters to waters under tidal influence.

(C) Development in Critical Areas. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(h)(1)(A) - (G), have been satisfied. The commission shall coordinate its efforts under this subparagraph with those of other appropriate state and federal agencies.

(D) Dredging and Dredged Material Disposal and Placement. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(j), have been satisfied.

(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (Agency Consistency Determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(A) The commission shall issue consistency determinations under this paragraph as an element of the permitting process for permits to dispose of oil and gas waste in a pit and permits to discharge oil and gas waste to surface waters.

(B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.

(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse affect on any coastal natural resource area (CNRA) identified in the applicable policies."

(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse affects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.

(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(II) If the commission determines that the proposed activity would not meet the applicable requirements of paragraph (1) of this subsection, the commission shall not issue the permit or certification.

(3) Thresholds for Referral. Any commission action that is not identified in this paragraph shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to Title 31, Texas Administrative Code, §505.32 (Requirements for Referral of an Individual Agency Action), the thresholds for referral of consistency determinations issued by the commission are as follows:

(A) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(B) for discharges, any permit to discharge oil and gas waste consisting, in whole or in part, of produced waters into tidally influenced waters at a rate equal to or greater than 100,000 gallons per day;

(C) for certification of federal permits for development in critical areas:

(i) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(I) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(II) five acres or more of any other critical area; and

(ii) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area;

(D) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 4. ENVIRONMENTAL PROTECTION

The Railroad Commission of Texas (Commission) adopts amendments to §§4.201 - 4.204, relating to Purpose; Applicability and Exclusions; Responsibility for Management of Waste to be Recycled; and Definitions; the repeal of §§4.205 - 4.226, relating to General Permit Application Requirements for Commercial Recycling Facilities; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; Administrative Decision on Permit Application; Protests and Hearings; Standards for Permit Issuance; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; Permit Renewal; Exceptions; Modification, Suspension, and Termination; and Penalties; and new §§4.205 - 4.224 and §§4.230 - 4.293, concerning commercial recycling. Sections 4.202 - 4.207, 4.222, 4.236, 4.240, 4.243, 4.259, 4.262 - 4.277, and 4.278 - 4.293 are adopted with changes, and the remaining sections are adopted without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7562). The titles of Subchapter B, Division 5 and Division 6 are also changed from the proposal.

The Commission adopts the amendments, repeals, and new rules to reorganize Subchapter B, Commercial Recycling, into the following six divisions: Division 1, General; Definitions; Division 2, Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling; Division 3, Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling; Division 4, Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities; Division 5, Requirements for Off-Lease Commercial Recycling of Fluid; and Division 6, Requirements for Stationary Commercial Recycling of Fluid. The Commission also adopts amendments to §3.8 of this title (relating to Water Protection) in a separate but concurrent rulemaking; the adopted amendments to §3.8 also relate to commercial recycling activities and requirements. Certain comments addressed both proposals, while other comments addressed one or the other; therefore, the Commission notes that interested persons may wish to review both adoption preambles.

The Commission received 14 comments, four of which were from groups or associations (Texas Oil & Gas Association ("TxOGA"); Environmental Texas, Earthworks, Public Citizen, and Sustainable Energy and Economic Development Coalition (submitted jointly; "Joint Commenters"); Environmental Defense Fund; and Texas Water Recycling Association ("TWRA")), and 10 of which were from companies (CWS; Geologic Environmental; Omni Water Solutions, Inc.; VSW Water Purity, LLC; P&F Water Solution, LLC ("P&F"); Pioneer Natural Resources ("Pioneer"); R360 Environmental Solutions ("R360"); Scott Environmental Services, Inc. ("Scott"); Seven Seas Water Company; and Waste Facilities, Inc. ("WFI")).

On February 11, 2013, the Commission received notice from Seven Seas Water Company that it wished to withdraw its comments filed with the Commission on October 29, 2012.

COMMENT: The Environmental Defense Fund commended the Commission for addressing the issues raised in this rulemaking and encourages the Commission to continue in its efforts to deal proactively with challenges arising from evolving oil and gas technology and practices.

RESPONSE: The Commission agrees with this comment.

COMMENT: TxOGA and P&F requested clarification as to whether a permit is required when an operator conducts the recycling of produced water solely by and for the operator's purposes entirely on the operator's lease.

RESPONSE: The Commission agrees a permit is not required for an operator to conduct recycling of produced water on its own lease. In order to eliminate confusion, the Commission has simplified the framework of authorized fluid recycling and authorized fluid recycling pit. The Commission has combined the concepts of non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling and non-commercial centralized produced water and/or hydraulic fracturing fluid as found in the proposal into a new, more inclusive, term: "non-commercial fluid recycling." Non-commercial fluid recycling is defined as the recycling of wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), where the operator of the lease, drilling unit, or non-commercial disposal or injection well treats or contracts with a person for the treatment of the fluid and may accept such fluid from other leases or operators. Furthermore, the Commission has combined the concepts of non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit and non-commercial off-lease or centralized produced water and/or hydraulic fracturing flowback fluid recycling pit into the new term "non-commercial fluid recycling pit." Non-commercial fluid recycling pit is defined as a pit used in conjunction with one or more oil or gas leases or units, and is located on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit, or upon land leased or owned by the operator for the purposes of operation

of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, that is constructed, maintained, and operated by the operator of record of the lease or unit for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid that is a recyclable product. The new terms are more specific and attempt to eliminate ambiguity in the rule.

COMMENT: TxOGA requested further clarification as to whether an operator needs additional authority from the Commission to transport treated water to another site for beneficial reuse within its operations.

RESPONSE: The scenario described by TxOGA of an operator engaging in the recycling of its own waste would be classified as non-commercial fluid recycling under §3.8 because the generator of the waste is engaging in the recycling activity. The Commission agrees that no additional authority is needed for such non-commercial hauling of oil and gas wastes for non-commercial recycling. The Commission makes no change in response to this comment.

COMMENT: TxOGA recommended that the Commission delete the term "hydraulic fracturing flowback fluid" throughout the rule because hydraulic fracturing flowback fluid is just produced water and the language implying otherwise is confusing.

RESPONSE: Produced water and hydraulic fracturing flowback fluid are terms commonly used in oil and gas regulation. However, the Commission agrees that for the purposes of regulating wellbore fluid recycling, referring to hydraulic fracturing flowback fluid and produced water as separate waste streams is not necessary. The Commission therefore replaces the terms "hydraulic fracturing flowback fluid" and "produced water" throughout the new sections of the rule relating to authorized non-commercial recycling, with the more inclusive term "fluid."

COMMENT: TxOGA and TWRA suggested the definition of "commercial recycling" proposed in §3.8(a)(42) be consistent with the definitions found in Chapter 4, Subchapter B.

RESPONSE: The Commission agrees but has removed the term "commercial recycling" from §3.8, eliminating any inconsistencies.

COMMENT: TxOGA recommended the term "recycle" be replaced with the term "produced water reuse," which would be defined as "to process and use either treated or untreated produced water as a product for which there is an authorized use under this subchapter. For purposes of this section, injection of produced water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery under authorization and permit under §3.46 does not qualify as reuse."

RESPONSE: The Commission agrees in part with the comment. To be consistent with Chapter 4, Subchapter B, the Commission declines to adopt the term "produced water reuse" and delete the term "recycle" but has amended the definition of "recycle." As this comment relates to §3.8, the Commission has modified the definition of "recycle" to read: "To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs)."

COMMENT: TxOGA recommended that the Commission revise the definition of "recycle", as proposed in §4.204(16) to read "to process and/or use or reuse oil and gas wastes as a product for which there is a legitimate commercial use."

RESPONSE: The Commission disagrees with this comment. The requirement to use the product resulting from a recycling process is paramount to the Commission's handling of recycling and must be included.

COMMENT: TxOGA recommended that the Commission delete the phrase "as defined in a permit issued pursuant to this subchapter" from the definition of "legitimate commercial use" in §4.204(9) as all recycling activities do not require a permit.

RESPONSE: The Commission agrees in part with this comment and has clarified the definition of "legitimate commercial use" to include the use or reuse of a product either authorized or permitted under this subchapter.

COMMENT: TxOGA recommended that the Commission amend the definition of "recyclable product" proposed in §4.204(15) to classify produced water and water as a "natural resource" instead of a "commercial product" as water is typically not a commercial product.

RESPONSE: The Commission disagrees with this comment and makes no change. Produced water is an oil and gas waste, not a natural resource. Water is a natural resource but, as it relates to these adopted rules, is also a product that must be sourced. As such, the Commission finds the proposed change is not necessary.

COMMENT: TxOGA recommended that the Commission add clarifying language to §4.206(c). Specifically, TxOGA recommended that the Commission add the phrase "of administrative denial" to the end of the first sentence in §4.206(c).

RESPONSE: The Commission agrees with the comment and adopts the suggested change.

COMMENT: TxOGA recommended that "affected person" as it is used in §4.207(a) be added to the definitions within Chapter 4, Subchapter B, and recommended the phrase "of protest" be added after the word "notice" in the second sentence and that the word "shall" replace "may" in the last sentence of §4.207(a).

RESPONSE: The Commission agrees in part with this comment and adopts the suggested change to replace "may" with "shall" in the last sentence of §4.207(a). The Commission disagrees with the other two suggested changes.

COMMENT: TxOGA commented that due process considerations may dictate that the director set out in the referral or in notice to the applicant the reasons for a hearing, as it relates to §4.207(b).

RESPONSE: The Commission agrees in part with this comment and is already in the practice of including the reasons for hearings, based on information provided by the person requesting the hearing, in its notices. The Commission also sends a copy of the protest letter to the applicant when notifying the applicant that a protest has been received. Therefore, the Commission finds no changes to the text of the rule are necessary.

COMMENT: TxOGA recommended several revisions to §4.210 to provide clarity. Specifically, TxOGA recommended that the Commission revise §4.210(4) and (6) to add permit amendment or renewal to the misrepresentations or materially changes, respectively.

RESPONSE: The Commission disagrees with this comment. Initial permit issuance, a permit amendment, and a permit renewal

are all permit issuances and permit applications. Therefore, the Commission finds the recommended changes are unnecessary.

COMMENT: TxOGA recommended that the Commission delete the phrase "engineering and environmental" from §4.215(6) and §4.221(a)(2) as it finds these terms are undefined.

RESPONSE: The Commission disagrees with this comment. Engineering and environmental standards for recyclable products resulting from solid oil and gas waste are defined in §4.222(d).

COMMENT: TxOGA recommended that the Commission add the phrase "proximity to public, domestic, or irrigation water wells" to §4.219(c) as a factor the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling.

RESPONSE: The Commission disagrees that this change is necessary because §4.219(b)(2) already addresses this issue.

COMMENT: TxOGA recommended that the Commission revise §§4.220(a)(2)(B), 4.241(a)(2)(B), 4.257(a)(2)(B), and 4.289(a)(2)(B) to require the permittee to only "institute reasonable measures to prevent, control, and remediate spills."

RESPONSE: The Commission disagrees with this comment and finds the direct requirement to control and remediate spills is clear and reasonable.

COMMENT: TxOGA recommended that the Commission clarify §4.238(a)(1)(D). Specifically, does the director determine both "affected persons" and "class of persons" that should receive notice, or are "affected persons" defined in RRC rules and the director determines only other "class of persons" that should receive notice?

RESPONSE: The Commission disagrees with the comment and makes no change. The director determines if there are any "affected persons," as defined in §3.8, or "class of persons" beyond those identified in §4.238(a)(1)(A) - (C) that should receive notice of an application.

COMMENT: TxOGA recommended that the Commission add the word "prior" before the word "written" in the last sentence in §4.239(a).

RESPONSE: The Commission disagrees with this comment and finds the existing language is already clear.

COMMENT: TxOGA recommended that the Commission add the word "monitoring" before the word "requirements" in the first sentence of §§4.243(a), 4.259(a), and 4.275(a).

RESPONSE: The Commission agrees with this comment and adopts the clarifying changes.

COMMENT: The Joint Commenters recommended that the Commission consider mandating the recycling of produced water and/or hydraulic fracturing fluid.

RESPONSE: The Commission does not intend to require oil and gas operators to recycle such fluids at this time. With the adoption of this rulemaking, the Commission sets up a regulatory framework in which recycling is a viable alternative to disposal but allows the operators to make their own water and waste management decisions. The Commission makes no change in regard to these comments.

COMMENT: The Joint Commenters recommended that the Commission mandate the tracking and reporting of commercially recycled liquid oil and gas waste.

RESPONSE: The Commission agrees in part with this comment. Operators already are required to maintain records tracking their waste streams from the point of generation to their final disposition. These records must be made available upon request of Commission personnel.

COMMENT: TWRA requested clarification as to whether non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(43) is authorized in both §3.8 and Chapter 4, Subchapter B, and refers to a single operator and a single contractor dedicated to that operator on a single lease.

RESPONSE: The Commission agrees in part with this comment. Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling, which has been replaced with the more inclusive term "non-commercial fluid recycling" is authorized by §3.8, but falls outside the scope of Chapter 4, Subchapter B, as this subchapter addresses commercial recycling activities. The Commission makes no change in response to this comment.

COMMENT: TWRA requested clarification as to whether non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(44) is the same type of facility referenced in Chapter 4, Subchapter B, Division 5, as off-lease or centralized water recycling.

RESPONSE: The Commission disagrees with this comment. Non-commercial fluid recycling as adopted in §3.8(a)(41) may be conducted by the generator of the waste or a contractor, but the recycling activity remains under the control of the generator of the waste and must occur on an oil and gas lease, drilling unit, or on the site of a non-commercial disposal or injection well. Off-lease commercial recycling of fluid, as discussed in Chapter 4, Subchapter B, Division 5, covers commercial recycling that is done under the control of a third-party, commercial entity off of an oil and gas lease or drilling unit and is outside the control of the generator of the waste.

COMMENT: TWRA requested clarification as to whether the term "lease" specifically refers to a lease as identified in Commission regulations and may contain multiple oil wells.

RESPONSE: The Commission agrees with this statement, but makes no change in response to the comment.

COMMENT: TWRA requested that the Commission add language in §4.204(8) to indicate that a "hydrofrac treatment" is a "completion procedure" in the definition of hydraulic fracturing treatment.

RESPONSE: The Commission disagrees with this comment because it raises issues beyond the scope of this rulemaking, and makes no change to the definition at this time.

COMMENT: CWS requested clarification on the reuse of waste water, specifically the process of reusing wash water to continually to clean tanks and trucks and if this practice falls under the commercial recycling rule.

RESPONSE: The Commission does not intend to include the reuse of wash water under the commercial recycling rules if the water does not first undergo thermal or chemical treatment prior to being reused.

COMMENT: Geologic Environmental commented that the words "waste" and "oil and gas waste" should be removed and replaced with "material", "substance", or "fluid" as it should not be called a waste until it is destined for disposal. Geologic Environmental

further commented that if the material is recycled, it should not be called a waste.

RESPONSE: The Commission disagrees with this comment because the Commission considers oil and gas waste destined for recycling and recyclable product that has yet to be put to its intended use as waste. The Commission agrees that recyclable product put to a legitimate commercial use as authorized in a permit issued under Chapter 4, Subchapter B, is not a waste. The Commission makes no change in response to this comment.

COMMENT: Omni Water Solutions, Inc. requested that the off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing fluid found in Division 5 be amended to allow for partially recycled fluids from this type of facility to be treated and redistributed to operators who did not generate the original source fluid.

RESPONSE: The Commission agrees in part with these comments. Chapter 4, Subchapter B, Division 5, addresses the off-lease commercial recycling of fluid. There is no limitation to which the operator of an off-lease commercial recycling facility can provide recyclable product. However, the Commission is unsure what the commenter means by "partially recycled fluids," as the Commission does not propose universal quality standards that the operator must demonstrate its treated fluid has met before it can be classified as a recyclable product. The intent of the rule is that a commercial recycling facility operator provides its customers with fluids treated to a level at which the fluids have a legitimate commercial use.

COMMENT: Omni Water Solutions, Inc. also requested that provisions be incorporated into the rule to address the potential rapid shift in drilling operations. Recyclers need to able to move rapidly with the drilling operations and the proposed rule requiring a permit for each off-lease or centralized fluid recycling facility would prevent this movement from happening.

RESPONSE: The Commission recognizes that to facilitate the recycling of wellbore fluids, recyclers need flexibility to move with drilling operations. Accordingly, the Commission adopts specific provisions that authorize, without the need for a permit, fluid recycling that would have required a permit under Division 5 in the proposal. The authorization is limited to fluid recycling at a commercial disposal or injection well facility, provided the disposal well operator assumes responsibility for all operations, including the recycling, on the lease; conducts the recycling itself or contracts with a person to conduct the recycling; and has posted necessary financial security in accordance with §3.78; provides written notification to the appropriate district office of the planned recycling at least seven days before the recycling is expected to begin and includes details on how the fluids will be controlled and contained during the recycling operations; and provides written notification to the appropriate district office within seven days after the recycling operation concludes.

COMMENT: P&F recommended that the Commission revise the definition of "commercial recycling facility" proposed in §4.204(3). Specifically, P&F recommended that the last sentence of the definition read "Does not include non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling as defined in Section 3.8."

RESPONSE: The Commission agrees in part with this comment. The Commission has amended the last sentence to read "Does not include non-commercial fluid recycling as defined in §3.8 of this title."

COMMENT: Pioneer noted that the definition of "hydraulic fracturing flowback fluid" in §3.8 is slightly different than the definition in Chapter 4, Subchapter B, and requested that the two definitions be identical.

RESPONSE: The Commission agrees in part with this comment. However, the Commission has amended the proposal to only address the more inclusive "fluid" recycling, to ensure all wellbore fluids that are capable of being recycled are captured by the rule. As such, the Commission has deleted the definition of "hydraulic fracturing flowback fluid" from both rules, making the comment moot.

COMMENT: R360 recommended that the Commission review the classifications of solid waste recycling facilities and the associated requirements for each one to ensure that the unique risks associated with each type of facility are addressed.

RESPONSE: The Commission considered the requirements for each type of solid waste recycling facility and determined that the requirements for each type are appropriate for the proposed operations to occur under each classification.

COMMENT: R360 recommended that the requirements for on-lease commercial solid oil and gas waste recycling facilities be more stringent, and comparable to requirements applicable to stationary and off lease or centralized solid oil and gas recycling facilities.

RESPONSE: The Commission disagrees with this recommendation. The Commission has determined that the requirements for on-lease commercial solid oil and gas waste recycling are protective because the activity occurs under a permit, takes place on the oil and gas operator's lease and is limited to that operator's waste. The Commission has the authority to hold responsible both the recycling permit holder and the operator of the lease for any compliance issues. The Commission generally holds the lease operator responsible for any activity that occurs on the lease, including the management of oil and gas waste at the lease.

COMMENT: R360 commented that off-lease or centralized commercial recycling facilities should not be required to install monitoring wells and should have different notice provisions.

RESPONSE: The Commission disagrees with this recommendation. The Commission adopts two separate terms for off-lease recycling, as necessitated by other comments and the resulting changes in the handling of fluid recycling. As all on-lease fluid recycling is now authorized by §3.8 or Chapter 4, Subchapter B, the use of the term "off-lease or centralized" is no longer applicable as it applies to fluid recycling and has been replaced by the term "off-lease commercial fluid recycling facility." The proposed term "off-lease or centralized commercial recycling facility" now only applies to solid oil and gas waste recycling; as such the term "off-lease or centralized commercial solid oil and gas waste recycling facility" is adopted.

As adopted in §4.204(14), off-lease or centralized commercial solid oil and gas waste recycling facility operations may occur at one site for up to two years. Monitor wells are a reasonable requirement to ensure that such commercial operations have not impacted groundwater. The volume of waste to be processed at an off-lease or centralized commercial recycling operation is not limited as it would be at an on-lease commercial recycling operation. The potential volume of waste to be handled and processed through an off-lease or centralized commercial recycling facilities justifies the installation of monitor wells to demonstrate

that groundwater has not been polluted by the operation. Furthermore, the potential impact to surrounding landowners and the pollution potential from handling and processing waste at an off-lease or centralized commercial recycling operation is more similar to the risk posed by a commercial disposal facility. As such, the Commission finds the monitor well and notice requirements in §4.236 and §4.238 for solids, and §4.268 and §4.270 for liquids are appropriate.

COMMENT: R360 recommended that the Commission require a minimum amount of financial security for all commercial recycling operations.

RESPONSE: The Commission disagrees with this recommendation. The Commission requires financial security for commercial off-lease and centralized recycling of solids, commercial off-lease recycling of fluids, and for stationary commercial recycling facilities that recycle fluids and solids, but not for on-lease commercial solid waste recycling. Because the permitted activities take places on the operator's lease, that is limited to that operator's waste, and that operator is required to post financial security pursuant to §3.78, the Commission finds that additional financial security is not necessary. The Commission has the authority to pursue corrective actions, up to and including enforcement, on both the solid waste recycler and the operator of the lease for any pollution caused on the lease.

COMMENT: R360 recommended that the Commission adjust the standards for road base, by maintaining the chloride limit at 700 milligrams per liter instead of 500 milligrams per liter.

RESPONSE: The Commission agrees with the comment on chloride limits. The change from 700 milligrams per liter to 500 milligrams per liter of chlorides for the road base was inadvertent; the Commission has restored the limit of 700 mg/l found in the tables in §§4.222(d), 4.243(d), and 4.259(d). The Commission also inadvertently proposed changes to the limits for arsenic and pH, and the test method for compressive strength. The Commission declines to adopt the proposed language and restores these standards as they appear in the existing rule.

COMMENT: R360 recommended that the Commission require permit applicants should be required to demonstrate there is an actual market for the product of a recycling process.

RESPONSE: The Commission generally agrees with this comment, but finds that the rule already accomplishes this objective. The rule has provisions in place to prevent the speculative accumulation of waste. Recycling operators are required to process and put to a legitimate use 75 percent of the waste they receive in a given year. If there is no market for the product, the recycler will not be able to meet this requirement and should cease operations in order to remain in compliance with Commission rules. The financial security requirements in §4.239(b) and §4.255(b) require the operator of a commercial recycling operation to submit financial security to the Commission in the maximum amount needed to close the facility. Included in this amount are disposal costs for all stockpiles at the facility, both unprocessed waste and recyclable product. As such, a recycling operator has an incentive to determine there is a legitimate commercial use and market for its product prior to obtaining a permit as any stockpiled recyclable product will proportionately increase the operator's required financial security. The Commission makes no change in response to this comment.

COMMENT: R360 recommended that the Commission require permit applicants demonstrate adequate training, technical expertise, and environmental management practices to safely and responsibly operate a recycling facility.

RESPONSE: The Commission generally agrees with this comment but finds the rule already addresses the concern. As part of the application process, an applicant must demonstrate technical expertise in the preparation of the application. The rule allows the Commission to require a trial run upfront to allow a new permittee to demonstrate that it has the expertise to operate its facility in accordance with the representations made in its application, the requirements of the rules, and the conditions of its permit.

COMMENT: R360 recommended that the Commission review the exceptions in §4.205 to ensure that they do not unduly limit the flexibility of the Commission and waste service providers, specifically the proposed prohibition to consideration of exceptions to notice and sampling requirements.

RESPONSE: The Commission disagrees with this comment. The Commission gave serious consideration to the application requirements for which no exceptions will be considered. The Commission finds its proposed sampling requirements and frequencies are reasonable. It would be problematic to extrapolate analytical compliance in the short term to analytical compliance in the long term as suggested by the commenter. The Commission must be confident that recyclable product poses no threat to the environment as demonstrated through routine sampling. The Commission also disagrees that exceptions to notice requirements are warranted as the public's ability to actively participate in the permitting process of commercial applications is important. Notice is the widely accepted method of reconciling industrial uses of property with the rights of surrounding land owners and is required throughout the Commission rules regarding commercial waste management activities. The Commission makes no change in response to this comment.

COMMENT: R360 recommended that the Commission include in the rules incentives for recyclers with an exceptional history of compliance and/or superior performance, such as streamlined application procedures or reduced monitoring and reporting requirements.

RESPONSE: The Commission cannot establish special or favorable treatment for certain operators within its rules. However, in reality, it is likely that the application review process for an experienced recycler will take less time than the review process for an application submitted by an applicant with no experience because the experienced recycler is familiar with the Commission's rules and would be more likely to timely submit a more complete application. The Commission disagrees with the recommendation that it should relax monitoring or reporting requirements for a certain class of operators, as this data is needed on an on-going basis to demonstrate that recycling operations are not posing a pollution threat. The Commission makes no changes in response to this comment.

COMMENT: R360 recommended that the rules clarify that required submittals to the Commission, such as proof of notice and responses to Commission questions, are not "supplemental filings to complete an application."

RESPONSE: Supplemental filings are addressed in §§4.212(c), 4.230(c), 4.246(c), 4.262(c), and 4.278(c). Typically, the Commission has not considered proof of notice to be a supplemental filing, in that sense. However, chronic unresolved deficiencies (administrative or technical) may be characterized as supple-

mental filings; for example, while the comment regarding "questions" is vague, when the Commission asks questions in order to address deficiencies in an application, the applicant's responses generally will be considered supplemental filings.

COMMENT: R360 and Scott Environmental recommended that the Commission add provisions for the protection of trade secrets and confidential commercial information.

RESPONSE: The Commission did not intend that an applicant for a commercial recycling permit be required to submit proprietary information. Nevertheless, the Commission must have sufficient information in any such application to be able to determine whether or not the processing and use in question constitute recycling, and whether or not the proposed facility would pose a threat to human health or the environment. However, the Commission can foresee cases in which applications include information the applicant asserts is proprietary. The Public Information Act, in Texas Government Code §552.110, exempts trade secret and protected commercial or financial information from public disclosure; and in Texas Government Code, §552.305, establishes a process governmental bodies are required to follow when requested information involves a third party's property interests. The Commission processes public information requests in accordance with the requirements of the Public Information Act to ensure that trade secret and protected commercial or financial information is properly identified and withheld from public disclosure. The Commission makes no change in response to this comment.

COMMENT: Scott commented that its operations do not fit in the definitions of either on-lease commercial recycling or off-lease commercial recycling as Scott often partially treats waste on one lease but then completes the treatment and the actual reuse on another lease of the same operator.

RESPONSE: The Commission recognizes that not all potential operating scenarios will be captured within the three proposed classifications of commercial solid waste recycling. Accordingly, §4.205 allows for an operator to request an exception, which Commission staff will review on a case-by-case basis. The Commission makes no change in response to this comment

COMMENT: Scott Environmental requested that the Commission clarify that storage of material or wastes in trucks is allowed for on-lease commercial solid oil and gas waste recycling as the definition proposed in §4.204(11) limits storage to authorized pits and/or tanks.

RESPONSE: The Commission agrees that storage in a spill-proof truck would be the functional equivalent to storage in a tank. Therefore, the Commission has determined it is unnecessary to add trucks to the allowable storage options. The Commission makes no change in response to this comment.

COMMENT: Scott requested clarification that engineering work products must only be sealed as required by the Texas Engineering Practice Act.

RESPONSE: The Commission generally agrees with this comment. Section 4.213(b) requires that engineering works products prepared by the applicant be sealed by a registered engineer as required by the Texas Occupations Code, Chapter 1001, relating to the Texas Engineering Practice Act. The Commission makes no change in response to this comment

COMMENT: Scott commented that the requirement in §4.218(b) to require an on-lease solid waste recycling operator to obtain landowner permission instead of providing landowner notification is likely to discourage recycling. The commenter recommended that only notification be required, as well as any additional safeguards the Commission feels are needed to be incorporated into individual permits.

RESPONSE: The Commission disagrees with this comment. In other Commission rules, activities that occur on the land surface but outside of the well site require written surface owner permission prior to engaging in the activity. Specifically, under §3.8(d)(3)(C), an operator may landfarm certain types of water-based drilling fluids and the associated cuttings anywhere on the lease, but must first obtain written landowner permission. The Commission has not proposed to limit on-lease solid waste recycling to the well site and it, like the authorized landfarming of certain water-based drilling fluids and the associated cuttings, can occur anywhere on the lease. The Commission therefore has determined that landowner permission should be required. The Commission makes no change in response to this comment.

COMMENT: Scott recommended that the Commission modify the proposed language in Chapter 4, Subchapter B, to make clear that only the solid waste recycling process itself cannot be conducted in a 100-year flood plain, but allow for the re-use and final treatment of solid recyclable product within a 100-year flood plain.

RESPONSE: The Commission agrees in part with this comment. Once a recyclable product that meets the engineering and environmental standards established in the rules has been created, the Commission does not intend to limit its use beyond requiring it be put to a legitimate commercial use. However, the Commission is unclear what the commenter means by "final treatment" in the comment. The Commission does not make a distinction between phases of treatment. No portion of the treatment process that is necessary to create a recyclable product that meets the engineering and environmental standards established in the rule may be conducted within a 100-year flood plain. The Commission makes no change in response to this comment

COMMENT: Scott recommended that the Commission modify the notice requirements in §4.220(c) to allow notification to the district office within two business days instead of 72 hours.

RESPONSE: The Commission disagrees with this comment. The 72-hour notice requirement is established to allow the appropriate district office sufficient time to plan for and conduct an inspection of a new site upon which on-lease recycling will occur. Two business days' notification is insufficient to logistically allow for this planning. The Commission makes no change in response to this comment.

COMMENT: Scott recommended that the Commission add an additional standard for leachable chlorides within §4.222(d). Specifically, the chloride limitation should be increased to 1,440 milligrams per liter if the recyclable product has a hydraulic conductivity of not more than 10-6 centimeters per second mercury permometer test on a molded sample.

RESPONSE: The Commission declines to adopt this recommendation at this time. The Commission does not have the necessary data to support that the incorporation of an increased chloride limitation based on hydraulic conductivity is protective of the environment. The Commission may reevaluate this issue if comprehensive data is submitted demonstrating that an increased leachable chloride concentration is protective of the environment based on a given hydraulic conductivity.

COMMENT: VSW Water Purity commented that there must be additional options for the operators and end users to recycle water. VSW commented that as long as there are no hydrocarbons or bacteria in the water, an operator can reuse the water.

RESPONSE: The Commission generally agrees with this comment. The Commission recognizes that the quality to which fluids must be treated before they can be reused will vary by operator. As such, the Commission has not proposed set treatment standards to which fluid must be treated before it can be reused in an oil or gas wellbore. The Commission only requires that the treated water have a legitimate commercial reuse. The Commission makes no change in response to this comment.

COMMENT: WFI commented that the Commission's permitting system is unduly complex and stifles innovation, competition and the ability of operators such as WFI to provide recycling services and that as a result, vast quantities of oil field waste are unnecessarily being disposed of in landfills or by underground injection. WFI requested that the Commission consider whether the detailed "cradle to grave" permitting process is necessary or appropriate for recycling, including the Commission's use of the terms "recyclable product," "partially treated waste," and "legitimate commercial use." WFI recommended that the Commission take a different approach if recycling is to play the large role it should in preventing pollution from oil field wastes. WFI recommended that the Commission regulate solid oil and gas waste recycling in the same manner the Texas Commission on Environmental Quality regulates recycled asphalt and recycled rubber tires and allow commercial solid drilling waste recycling through registration but without the need for a permit. WFI commented that, with reclamation through recycling, the material (waste) is transformed into a usable non-waste, and asserted that the Commission's definition of "recycle" and "recyclable product" in its rules and permits essentially treats recycling as disposal rather than reclamation. WFI commented that the Commission's regulatory scheme, which contemplates the possibility of the "recyclable product" reverting back to waste, causes the Commission to track the product to its final use, which WFI asserts is costly and unreasonable. WFI also recommended that the Commission define the term "abandon."

RESPONSE: The Commission disagrees with this comment. The key to an effective recycling program is a strong market for the product the recycler produces. Recycling works when there is a flow of waste from the generator to the recycler, who processes the waste, and recyclable product from the recycler to the recycler's customers, who put the product to its intended legitimate commercial use.

The Commission has experienced compliance issues with persons who have asserted they are in the solid oil and gas waste recycling business. The issues include accumulated huge volumes of drill cuttings which are not processed and sold to persons who put the product to use. In essence, these "recyclers" were engaging in de facto disposal operations. These rules implement the Commission's intent to prevent accumulation of waste without completing the full recycling process.

Recycling waste into a commercial product is not the same as manufacturing. Recycling involves a waste stream for which the generator, transporter, and receiver are responsible for managing. The risks posed by oil and gas wastes (produced water, hydraulic fracturing flowback fluid, unprocessed drilling mud and cuttings) are entirely different from those posed by shredded tires or asphalt. If there were not a recycling option, then the generator would be responsible for paying the receiver for proper disposal of the waste in a manner that will not cause or allow pollution. These rules establish standards by which the Commission expects the recycler to manage and treat the oil and gas waste it receives so as not cause or allow pollution.

The Commission declines to define "abandon" in the rule as it is being used in a manner consistent with its widely accepted definition.

For clarification, the Commission notes that the commenter uses "reclamation" as an activity that is part of the recycling process. Reclamation is a distinct, defined activity that falls under §3.57, relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials. Reclamation is the process of recovering crude oil and/or condensate from an oil and gas waste stream, such as tank bottoms. While reclamation could be part of an overall recycling operation, such as recovering crude oil from tank bottoms, then processing the solid waste byproduct from the reclaiming process into roadbase, the Commission distinguishes between the two terms. Simply processing solid oil and gas waste into a recyclable product, such as roadbase, is not "reclamation" under the Commission's rules. The Commission makes no changes in response to these comments.

COMMENT: WFI commented that the distinction between mobile and stationary facilities in the current rule has largely been eclipsed by technology. WFI recommended that the Commission remove references to "mobile" and "stationary" facilities in the rules and instead use "Standard Permits" and "Temporary Facilities Permits." Standard permits would be nearly identical to current stationary facility permits and temporary facility permits would replace permits for mobile facilities. This change would allow the Commission to focus on volumes of materials to be stored and treated and the length of time a facility intends to operate at a given location.

RESPONSE: The Commission agrees in part that the nomenclature of "mobile" and "stationary" within the existing rule is confusing. As such, the Commission has replaced "mobile" with "on-lease." The Commission declines to adopt the temporary and standard permit nomenclature as it has determined that the terms of "on-lease," "off-lease or centralized," and "stationary" are sufficient classifications of the regulated solid oil and gas waste recycling facilities at this time.

COMMENT: WFI commented that the restriction of limiting on-lease recycling to operating on one oil and gas lease makes recycling prohibitively expensive on smaller leases and prevents small operators from being able to recycle their waste. WFI recommended that the rule allow recycling to occur on any property and the waste to be used on any property.

RESPONSE: The Commission disagrees with this comment. While on-lease solid waste recycling is limited to treating only waste generated on that lease, there are other options to allow operators to engage in recycling. There are no absolute limitations on where off-lease, centralized, or stationary solid waste recycling could occur. While the Commission recognizes the fundamental economic maxim that unit costs are likely to decrease as the size of an operation increases, the Commission finds that the options of off-lease, centralized and stationary solid waste recycling provide sufficient opportunity for operators. The Commission makes no change in response to this comment.

COMMENT: WFI commented that the rules for recycling should firmly and explicitly tie financial security requirements to closure costs.

RESPONSE: The Commission agrees with this comment, but makes no change because §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) already reflect this concept.

COMMENT: WFI commented that the current rules require "mobile" facilities be restricted in the volume of waste that may be processed at any one location, but provide no guidance as to appropriate levels of restriction. Specific volume guidelines would simplify the permitting process and aid the regulated community in understanding the rules. WFI commented that it recognized that there is no "one size fits all" solution and recommended that the Commission adopt a "safe harbor" provision that would list specific volumes of waste and provide that a permit application limited to treating and storing the listed volumes of waste will be in compliance with Commission rules.

RESPONSE: The Commission agrees in part with this comment. On-lease solid waste recycling is limited based on the combination of four factors: the duration of operations, the volume and source of the waste to be processed, the type and characteristics of the waste, and the size of the area used for recycling. The Commission agrees there is no one size fits all solution to be implemented in rule. Existing mobile permits (on-lease, commercial solid waste recycling permits), limit the volume of waste to be treated within the actual permit. The Commission finds this is a suitable approach and declines to adopt a "safe harbor" provision.

COMMENT: WFI commented that protestors who submit a written letter protesting an application should be required to submit a supplemental form reconfirming they intend to protest before the Commission will accept the protest.

RESPONSE: The Commission disagrees with this comment. The Commission finds one letter from a protestor indicating the desire to protest is sufficient, is consistent with the notice requirements for other commercial oil and gas activities, and should instigate sufficient communication between the applicant and the protestant such that, by the time of a hearing, all parties can be aware of each other's intentions without further regulation by the Commission. A second letter or form is not necessary. The Commission makes no change in response to this comment.

Adopted Amendments and New Rules

Division 1. General; Definitions

New Division 1 includes §§4.201 - 4.211, which will consolidate the requirements and conditions that are standard to all commercial recycling.

The Commission adopts amendments to §4.201, relating to Purpose, to delete references to mobile and stationary facilities.

The Commission adopts amendments to §4.202, relating to Applicability and Exclusions. The amendments delete a reference to mobile and stationary commercial recycling facilities and add references to five categories of commercial recycling covered under the subchapter: (1) on-lease commercial recycling of solid oil and gas waste; (2) off-lease or centralized commercial solid oil and gas waste recycling; (3) stationary commercial solid oil and gas waste recycling; (4) off-lease commercial recycling fluid; and (5) stationary commercial recycling of fluid.

New subsection (c) states that the provisions of this subchapter do not apply to the recycling of fluid on an oil or gas lease, drilling unit, or non-commercial disposal or injection well. Such recycling is subject to the requirements of §3.8.

New subsection (d) states that the permitting provisions of this subchapter do not apply to the recycling of fluid at a commercial disposal well site provided the operator of the disposal well is responsible for all activities at the site, including the recycling of fluids, complies with reporting requirements, and has necessary financial security.

New subsection (e) states that the provisions of this subchapter are in addition to the permitting requirements of §3.8, which requires a permit for any pit not specifically authorized in the rule.

New subsection (f) states that the provisions of this subchapter do not authorize discharge of oil and gas waste.

Current subsection (c) is redesignated as subsection (g).

The Commission amends §4.203(b), relating to Responsibility for Management of Waste to be Recycled, to clarify that commercial hauling of oil and gas waste requires an oil and gas waste haulers permit.

The Commission amends §4.204, relating to Definitions, to add new definitions and to modify existing definitions. The Commission amends the definition of "commercial recycling facility" to delete the reference to mobile and stationary facility and with other changes previously discussed.

The Commission renumbers and amends the definition for "legitimate commercial use," to clarify the use may be done under an authorization or permit under this subsection.

The Commission renumbers the definition of "Louisiana Department of Natural Resources Leachate Test Method."

The Commission renumbers and amends the definition for "mobile commercial recycling" to change the term to "on-lease commercial solid oil and gas waste recycling"; to modify the definition to indicate that all materials and wastes are stored in authorized pits and/or tanks; to clarify that such recycling operations generally occur at one location for less than one year; and to state that this type of recycling is restricted in the type and characteristics of the waste.

The Commission renumbers the definitions for "oil and gas wastes" and "partially treated waste."

The Commission renumbers and revises the definition for "recyclable product" to clarify a recyclable product may be created under operations authorized by or pursuant to a permit issued by the Commission.

The Commission renumbers and revises the definition for "recycle" to clarify that recycling involves the processing and/or use or reuse of oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. The Commission has added an element to the definition of recycle, stating that recycling includes the actual act of using the recyclable product for its intended purpose. The Commission finds this wording is necessary based on its history with several facilities that have stockpiled vast amounts of oil and gas waste or processed material far exceeding permit limits while operating under commission-issued recycling permits. These amendments emphasize the requirement to actually put the recyclable product to use by adding this element to the definition. The Com-

mission requires a person who applies for and operates under a recycling permit to have determined there is an actual market for the product the person intends to produce, and requires the person to demonstrate regular sales and delivery of the product during the course of operating under the permit. Failure to demonstrate regular sales of the product may result in Commission determination that the operator is not engaged in recycling but rather the unlawful disposal of oil and gas waste, with its attendant consequences. As previously discussed, the Commission adopts some changes to clarify that the reuse of fluid for enhanced recovery purposes as authorized in §3.46 does not constitute recycling under this subsection.

The Commission adopts a new definition for "off-lease or centralized commercial solid oil and gas waste recycling facility" to mean a commercial recycling facility that treats solid oil and gas waste and that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years.

The Commission adopts a new definition for "off-lease commercial fluid recycling facility" to mean a commercial recycling facility that treats wellbore fluids produced from an oil or gas well and that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years.

The Commission adopts a new definition for "solid oil and gas waste" to mean oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.

The Commission renumbers and amends the definition for "stationary commercial recycling facility" and to add that a recycling facility located in an immobile, fixed location for a period of greater than two years is a stationary commercial recycling facility.

The Commission adopts new §4.205, relating to Exceptions, to specify how an applicant or permittee may ask for and receive an exception. The Commission will not grant any exceptions to the requirements for financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b); the notice requirements found in §§4.238, 4.254, 4.270, and 4.286; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291.

The Commission adopts new §4.206, relating to Administrative Decision on Permit Application, with the same wording in current §4.214, with one correction to the reference to Chapter 1 and one non-substantive clarification.

The Commission adopts new §4.207, relating to Protests and Hearings, with the same wording in current §4.215 with one non-substantive clarification and one word change to maintain consistency.

The Commission adopts new §4.208, relating to General Standards for Permit Issuance, using language currently contained in §4.216 and §4.217(b).

The Commission adopts new §4.209, relating to Permit Renewal, which states that permits issued pursuant to this subchapter may be renewed, but are not transferable without the written approval of the director.

The Commission adopts new §4.210, relating to Modification, Suspension, and Termination, with the same wording in current §4.225.

The Commission adopts new §4.211, relating to Penalties, with the same wording in current §4.226.

Division 2. Requirements for On-lease Commercial Solid Oil and Gas Waste Recycling.

The Commission adopts new §4.212, relating to General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities, which incorporate most of the wording in current §4.205, which is revised as appropriate to recycling waste from a single lease and generator on that same lease. Throughout Division 2, the Commission replaces references to mobile and stationary recycling facilities with references to on-lease commercial solid oil and gas waste recycling.

The Commission adopts new §4.213, relating to Minimum Engineering and Geologic Information, to incorporate most of the wording found in current §4.206 and to delete references to geology and Texas Occupations Code, Chapter 1002.

The Commission adopts the repeal of current §4.207, relating to Minimum Siting Information, and §4.208, relating to Minimum Real Property Information. Instead, the Commission adopts some of the wording for siting restrictions in any permit for on-lease commercial solid oil and gas waste recycling in new §4.219, relating to Minimum Permit Provisions for Siting, discussed later in the preamble.

The Commission adopts new §4.214, relating to Minimum Design and Construction Information, which incorporates most of the wording in current §4.209, and adds language to require a typical (rather than specific) layout and design for on-lease commercial solid oil and gas waste recycling.

The Commission adopts new §4.215, relating to Minimum Operating Information, which incorporates some of the wording in current §4.210. The Commission does not retain requirements for a plan to control unauthorized access, a waste acceptance plan, and an estimated duration of operation, but adds a new provision requiring the applicant to identify all of the Commission districts within which he or she seeks authorization to recycle.

The Commission adopts new §4.216, relating to Minimum Monitoring Information, which includes most of the wording in current §4.211, except for the requirement for a plan to sample monitoring wells.

The Commission adopts new §4.217, relating to Minimum Closure Information, which includes most of the wording in current §4.212, except for the requirement for a plan to sample and analyze soil, plug monitoring wells, and reseed the area.

The Commission adopts the repeal of §4.213, relating to Notice. Instead, the Commission adopts in new §4.218(b) a requirement that the operator obtain written permission from the surface owner of the lease for on-lease commercial solid oil and gas waste recycling. The Commission finds that §4.213 is not appropriate for activities performed by the operator's contractor on a lease involving the lease holder and the waste generated on that lease.

The Commission adopts new §4.218, relating to General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling. The new rule includes some wording from current §4.217, but omits references to permit terms for stationary facilities. The Commission also clarifies that a permit for on-lease commercial solid oil and gas waste recycling is valid for a term of not more than five years and will authorize operations at any one lease for no more than one year. The Commission also adopts

language stating that the permit will specify the Commission districts within which the permittee is authorized to engage in recycling pursuant to this division. The Commission further adds language that would require an application for transfer to be filed with the Oil and Gas Division in Austin at least 60 days before the desired transfer date. The Commission does not retain the language in current §4.217(b), relating to waste, and the current language in subsection (c), relating to financial security, as that language has been moved to Division 1.

Through these adopted rules, the Commission affirms that it is the applicant's responsibility to post financial assurance in the maximum amount necessary to close the facility at any time during the permit term. If the operator accumulates more waste, partially treated material or recyclable product than is allowed by the permit, then the permittee is obligated by §3.78 of this title to amend its permit and to increase its financial assurance to meet the actual conditions at the facility. Financial assurance must match the footprint of the facility, and if the footprint of the facility is expected to change, or does change during a permit term, the operator must apply for an amendment to the permit and adjust its financial assurance concurrent with the actual changes at the facility.

The Commission adopts new §4.219, relating to Minimum Permit Provisions for Siting, which includes most of the wording of current §4.218. The Commission includes permit conditions that would prohibit on-lease commercial solid oil and gas waste recycling activities in a streambed, in a sensitive area, or within 150 feet of surface water or a water well.

The Commission adopts the repeal of §4.224, relating to Exceptions; §4.225, relating to Modifications, Suspension, and Termination; and §4.226, relating to Penalties. The wording in these sections is adopted in other rules in Division 1.

The Commission adopts new §4.220, relating to Minimum Permit Provisions for Design and Construction, including some of the wording in current §4.219, to clarify that the Commission will include permit conditions that require remediation of any spills. In addition, the Commission adopts new wording in subsection (b) concerning construction and maintenance of any storage cells that is more appropriate to on-lease commercial solid oil and gas waste recycling, and in subsection (c) (currently §4.219(e)) to state that the permittee may commence operations under the permit 72 hours after notice to the appropriate district office.

The Commission adopts new §4.221, relating to Minimum Permit Provisions for Operations, including some wording in current §4.220, and adds some language used currently in permits issued by the Commission for on-lease commercial solid oil and gas waste recycling, including requirements for a trial run, management of excess rainwater from bermed areas, and suitability of the recyclable product for use.

The Commission adopts new §4.222, relating to Minimum Permit Provisions for Monitoring, including much of the wording in current §4.221. The Commission adopts in the rule current permit conditions relating to collecting and analyzing samples of treated material. In the Figure, the Commission adds zinc as a parameter for which analysis is required and adds a standard of 5.0 milligrams per liter (mg/l) and, as previously discussed, adopts some minor corrections. The Commission also adopts wording in subsection (e) to incorporate the recordkeeping and reporting requirements that the Commission currently includes in permits for on-lease commercial solid oil and gas waste recycling.

The Commission adopts new §4.223, relating to Minimum Permit Provisions for Closure, which includes most of the wording in current §4.222, but omits the references to "facility."

The Commission adopts new §4.224, relating to Permit Renewal, with some changes from the wording in current §4.223. The Commission deletes references in the current rule to various other rules with which an applicant for renewal of a permit for on-lease commercial solid oil and gas waste recycling must comply, and replaces those with a requirement that the applicant include details of proposed changes to the permit or a statement that there are no changes proposed that would require amendment of the permit other than the expiration date.

Division 3. Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.

Division 3 includes new §§4.230 - 4.245 with most of the language retained from the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease or centralized commercial solid oil and gas waste recycling facilities."

The Commission adopts new §4.230, relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, with the same wording in current §4.205.

The Commission adopts new §§4.231 - 4.237, relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information. The wording is the same as in the current rules, §§4.206 - 4.212, respectively. The Commission adopts a clarifying change in §4.236 to delete the word "stationary."

The Commission adopts new §4.238, relating to Notice, with some of the same wording found in current §4.213, but without the language associated with stationary recycling facilities concerning publication of notice in a newspaper.

The Commission adopts new §4.239, relating to General Permit Provisions, with much of the same wording found in current §4.217; however, the rule language limits a permit to a term of not more than two years.

The Commission adopts new §4.240 and §4.241, relating to Minimum Permit Provisions for Siting, and Minimum Permit Provisions for Design and Construction, with similar wording in current §4.218 and §4.219, respectively.

The Commission adopts new §4.242, relating to Minimum Permit Provisions for Operations, with similar wording to that found in current §4.220.

The Commission adopts new §4.243, relating to Minimum Permit Provisions for Monitoring, with similar wording in current §4.221. In the Figure, the Commission adds zinc as a parameter and sets the standard for zinc at 5.0 milligrams per liter (mg/l) and, as previously discussed, adopts some minor corrections.

The Commission adopts new §4.244, relating to Minimum Permit Provisions for Closure, with similar wording in current §4.222.

The Commission adopts new §4.245, relating to Permit Renewal, with similar wording in current §4.224, but the Commission has conformed the references to the renumbered rules with which an applicant for renewal must comply.

Division 4. Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities.

New Division 4 includes new §§4.246 - 4.261 with language similar to the current rules, but revised to update the requirements and to include in the rules the standard permit conditions for this type of facility. Throughout Division 4, the Commission replaces references to mobile and stationary recycling facilities with references to stationary commercial solid oil and gas waste recycling facilities and makes other conforming amendments to the existing language.

The Commission adopts new §§4.246 - 4.255, relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; and General Permit Provisions, with much of the same wording in the current §§4.205 - 4.217, respectively. The Commission has previously discussed in the preamble some of the conforming language that is changed from the current rules.

The Commission adopts new §4.256, relating to Minimum Permit Provisions for Siting, with similar wording in current §4.218, with exception that the Commission has included restrictions for siting a stationary commercial solid oil and gas waste recycling facility with respect to streambeds, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), surface water, and water wells.

The Commission adopts new §4.257, relating to Minimum Permit Provisions for Design and Construction, with similar wording in current §4.219.

The Commission adopts new §4.258, relating to Minimum Permit Provisions for Operations, with much of the same wording in current §4.220, with the addition of wording regarding conditions that are generally standard to permits issued by the Commission for this type of facility.

The Commission adopts new §4.259, relating to Minimum Permit Provisions for Monitoring, with most of the same wording in current §4.221. In the Figure, the Commission adds zinc as a parameter, with a standard of 5.0 mg/l and, as previously discussed, adopts some minor corrections.

The Commission adopts new §4.260, relating to Minimum Permit Provisions for Closure, with much of the same wording in current §4.222.

The Commission adopts new §4.261, relating to Permit Renewal, with similar wording in current §4.223, and corrects the references to the renumbered rules with which an applicant for renewal must comply.

Division 5. Requirements for Off-Lease Commercial Recycling of Fluid.

Division 5 includes new §§4.262 - 4.277 with language similar to the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease commercial recycling of fluid." The Commission also adopts other changes from current wording appropriate to recycling of fluid wastes.

The Commission adopts new §4.262 - 4.277, relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; and Permit Renewal, with much of the same wording in the current §§4.205 - 4.223, respectively. The Commission has previously discussed in the preamble some of the conforming language that is changed from the current rules.

Division 6. Requirements for Stationary Commercial Recycling of Fluid.

Division 6 includes new §§4.278 - 4.293 with language similar to the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing flowback fluid. The Commission adopts other changes appropriate to recycling of fluid wastes.

The Commission adopts new §§4.278 - 4.293, General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; and Permit Renewal, with much of the same wording in the current §§4.205 - 4.223, respectively. The Commission has previously discussed in the preamble some of the conforming language that is changed from the current rules.

SUBCHAPTER B. COMMERCIAL RECYCLING

16 TAC §§4.205 - 4.226

The Commission adopts the repeals under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or ac-

tivity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted repeals.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas, on March 26, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2013.

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SUBCHAPTER B. COMMERCIAL RECYCLING

DIVISION 1. GENERAL; DEFINITIONS

16 TAC §§4.201 - 4.204

The Commission adopts the amendments under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted amendments.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas, on March 26, 2013.

§4.202. Applicability and Exclusions.

(a) The provisions of this subchapter apply to the following categories of commercial recycling:

(1) on-lease commercial recycling of solid oil and gas waste;

(2) off-lease or centralized commercial solid oil and gas waste recycling;

(3) stationary commercial solid oil and gas waste recycling;

(4) off-lease commercial recycling of fluid; and

(5) stationary commercial recycling of fluid.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by §3.8 of this title (relating to Water Protection); §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials); or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste).

(c) The provisions of this subchapter do not apply to non-commercial fluid recycling. Such recycling is subject to the requirements of §3.8 of this title.

(d) The permitting provisions of this subchapter do not apply to the recycling of fluid received at a commercial disposal well operated pursuant to permit issued under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), provided the operator of the disposal well treats, or contracts with a person for the treatment of the fluid; the operator of the disposal well is responsible for all activities, including the recycling, that occurs on the lease; and has obtained financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements); provides written notification to the appropriate district office seven days before recycling operations are expected to begin and includes information on how fluids will be controlled and contained during recycling operations; and provides written notification to the appropriate district office within seven days of concluding recycling operations. Such recycling is authorized by this subchapter.

(e) The provisions of this subchapter are in addition to the permitting requirements of §3.8 of this title, which requires a permit for any pit not specifically authorized in the rule.

(f) The provisions of this subchapter do not authorize discharge of oil and gas waste.

(g) The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for commercial recycling permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §3.8(f) of this title (relating to Water Protection).

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

§4.204. Definitions.

Unless a word or term is defined differently in this section, the definitions in §3.8 of this title (relating to Water Protection), §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), and §4.603 of this title (relating to Definitions), shall apply in this subchapter. In addition, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.

(2) Adjoining--Every tract of property surrounding the tract of property upon which the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

(3) Commercial recycling facility--A facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the primary business purpose of the facility is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility. Includes recycling of solid oil and gas wastes on or off lease. Does not include non-commercial fluid recycling as defined in §3.8 of this title.

(4) Commission--The Railroad Commission of Texas.

(5) Director--The director of the Commission's Oil and Gas Division or the director's delegate.

(6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An analytical method used to evaluate the potential for leaching of metals and/or benzene into surface and subsurface water.

(7) Legitimate commercial use--Use or reuse of a recyclable product as authorized or defined in a permit issued pursuant to this subchapter:

(A) as an effective substitute for a commercial product or as an ingredient to make a commercial product; or

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(8) Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(9) On-lease commercial solid oil and gas waste recycling--Commercial recycling performed on an oil or gas lease or well site using equipment that moves from one location to another, at which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

(A) amount of time, generally less than one year, operations occur at any one location;

(B) volume and source of the waste that may be processed at any one location;

(C) the type and characteristics of the waste; and

(D) size of the area used for recycling.

(10) Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).

(11) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.

(12) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

(13) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(14) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.

(15) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(16) Solid oil and gas waste--Oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.

(17) Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location for a period of greater than two years that recycles solid oil and gas waste or wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §§4.205 - 4.211

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

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§4.205. Exceptions.

Except for the requirements related to financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) of this title; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of this title; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this title, an applicant or permittee may request an exception to the provisions of this subchapter by submitting to the director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The director shall review each written request on a case-by-case basis. If the director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but may not use the requested alternative until the alternative is approved by the Commission.

§4.206. Administrative Decision on Permit Application.

(a) If the Commission does not receive a protest to an application submitted under this subchapter, the director may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(b) The director may administratively deny the application if it does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The director shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the director within 30 days of the date on the notice of administrative denial. If the director receives a request for a hearing, the director shall refer the matter to the Office of General Counsel for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

§4.207. Protests and Hearings.

(a) If a person who receives notice or other affected person files a proper protest with the Commission, the director shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the director's notice to respond, in writing, by either requesting a hearing or withdrawing the application. In the absence of a timely written response from the applicant, the director shall consider the application to have been withdrawn.

(b) Even if there is no protest filed, the director may refer an application to a hearing if the director determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the director will consider the characteristics and volume of oil and gas waste to be stored, handled and treated at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.212 - 4.224

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

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§4.222. Minimum Permit Provisions for Monitoring.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste; and

(2) the intended use for the recyclable product.

(c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this subchapter or in a permit issued by the Commission.

(d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yard composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.222(d)

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records must be kept of all waste treated for a period of three years from the date of treatment.

(B) These records must include the following:

(i) name of the generator;

(ii) source of the waste (lease number or gas I.D. number and well number, or API number);

(iii) date the waste was treated at the drill site;

(iv) volume of the waste treated at the drill site;

(v) name of the carrier;

(vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;

(vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and

(viii) documentation indicating the approximate location where recyclable product is used including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.230 - 4.245

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

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§4.236. Minimum Monitoring Information.

A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a commercial recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.240. Minimum Permit Provisions for Siting.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) An off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.243. Minimum Permit Provisions for Monitoring.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yards composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.243(d)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES

16 TAC §§4.246 - 4.261

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

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§4.259. Minimum Permit Provisions for Monitoring.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.259(d)

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, must be monitored for the following parameters after installation and quarterly thereafter:

(A) static water level;

(B) benzene;

(C) total petroleum hydrocarbons (TPH);

(D) total dissolved solids (TDS);

(E) chlorides;

(F) bromides;

(G) sulfates;

(H) nitrates;

(I) carbonates;

(J) calcium;

(K) magnesium;

(L) sodium; and

(M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Oil and Gas Division and the appropriate district office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID

16 TAC §§4.262 - 4.277

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

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§4.262. General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid.

(a) An application for a permit for off-lease commercial recycling of fluid shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall determine that the application is administratively complete prior to administratively approving an application or referring an application to hearing. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.263. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for off-lease commercial recycling of fluid to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.264. Minimum Siting Information.

A permit application for off-lease commercial recycling of fluid shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.265. Minimum Real Property Information.

(a) A permit application for off-lease commercial recycling of fluid shall include a copy of the signed lease agreement between the

applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for off-lease commercial recycling of fluid shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.266. Minimum Design and Construction Information.

(a) A permit application for off-lease commercial recycling of fluid shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for off-lease commercial recycling of fluid also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; and

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design.

§4.267. Minimum Operating Information.

A permit application for off-lease commercial recycling of fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.268. Minimum Monitoring Information.

A permit application for off-lease commercial recycling of fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at an off-lease commercial recycling of fluid facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.269. Minimum Closure Information.

A permit application for off-lease commercial recycling of fluid shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes and equipment;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.270. Notice.

(a) A permit applicant for off-lease commercial recycling of fluid shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with

the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the date of receipt and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recyclable product.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each person was notified of the application.

(b) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.271. General Permit Provisions.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall be valid issued for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, off-lease commercial recycling of fluid comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for off-lease commercial recycling of fluid shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

§4.272. Minimum Permit Provisions for Siting.

(a) A permit for off-lease commercial recycling of fluid may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) Off-lease commercial recycling of fluid permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title, or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.273. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for off-lease commercial recycling of fluid pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

§4.274. Minimum Permit Provisions for Operations.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

§4.275. Minimum Permit Provisions for Monitoring.

(a) A permit for off-lease commercial recycling fluid issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division for use of the treated fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

§4.276. Minimum Permit Provisions for Closure.

A permit for off-lease commercial recycling fluid issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.277. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. The application for renewal of an existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), and the notice requirements of §4.270 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2013.

TRD-201301270

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For further information, please call: (512) 475-1295

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DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF FLUID

16 TAC §§4.278 - 4.293

The Commission adopts the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the adopted new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas, on March 26, 2013.

§4.278. General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility.

(a) An application for a permit for a stationary commercial fluid recycling facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.279. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for a stationary commercial fluid recycling facility to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.280. Minimum Siting Information.

A permit application for a stationary commercial fluid recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the

facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.281. Minimum Real Property Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial fluid recycling facility shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.282. Minimum Design and Construction Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a commercial fluid recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.283. Minimum Operating Information.

A permit application for a stationary commercial fluid recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the treatment process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.284. Minimum Monitoring Information.

A permit application for a stationary commercial fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a commercial fluid recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.285. Minimum Closure Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

(b) A permit application for a stationary commercial fluid recycling facility also shall include in the closure plan information addressing how the applicant intends to:

(1) sample and analyze soil and groundwater throughout the facility; and

(2) plug groundwater monitoring wells.

§4.286. Notice.

(a) A permit applicant for a stationary commercial fluid recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Stationary Commercial Fluid Recycling Facility";

(B) provide the date the applicant filed the application with the Commission for the permit;

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

(E) identify the owner or owners of the property upon which the proposed facility will be located;

(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and

(G) provide the address to which protests may be mailed.

(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial fluid recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.287. General Permit Provisions.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall be valid for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial fluid recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

§4.288. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial fluid recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial fluid recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial fluid recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.289. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial fluid recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

§4.290. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

§4.291. Minimum Permit Provisions for Monitoring.

(a) A permit issued for a stationary commercial fluid recycling facility pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division may require laboratory testing. A permit that requires laboratory testing shall require that the per-

mittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

§4.292. Minimum Permit Provisions for Closure.

A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.293. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.278 of this title (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), and the notice requirements of §4.286 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.279 - 4.285 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2013.

TRD-201301271
Cristina Martinez Self
Rules Attorney
Railroad Commission of Texas
Effective date: April 15, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

The Texas Board of Nursing (Board) adopts an amendment to §211.7, relating to Executive Director. The amendment is adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 751) and will not be republished.

Reasoned Justification. The amendment is adopted under the authority of the Occupations Code §§301.101, 301.151, 301.452, 301.453, 301.467, and 301.468 and is intended to: (i) reduce the volume of requests that must be heard by the Eligibility and Disciplinary Committee (Committee) of the Board; and (ii) reduce and/or eliminate the amount of time that individuals must wait to have their matters heard and decided by the Committee.

Background

The Committee has been designated by the Board to meet eight times a year, in the months where the full Board does not meet. The Committee is comprised of a three member panel of Board members. Pursuant to 22 TAC §211.6(b) and §213.23(a), the Committee has been authorized to make final decisions in all eligibility and disciplinary matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. The Committee has historically permitted individuals to appear before it to request exceptions to stipulations in an existing eligibility or disciplinary Board order, to petition to have a limited license lifted and to be returned to direct patient care, and to request a limited license. Over time, these types of requests have grown in number and complexity. In 2009, approximately 25 of these types of requests were heard by the Committee. In 2010, approximately 31 of these requests were heard by the Committee. In 2011 and 2012, approximately 40 of these requests were heard by the Committee. In addition to these types of requests, the Committee also considers individuals petitioning for licensure eligibility and presenting motions for rehearing at its regular meetings. As a result, the Committee's designated meeting times are filled quickly, and individuals must sometimes wait several months before their requests can be heard and decided by the Committee. The adopted amendment is intended to reduce the amount of time individuals must wait to have their requests heard by the Committee and/or eliminate the need for certain individuals to appear before the Committee altogether.

Under the adopted amendment, the Executive Director is authorized to grant an individual's request for a limited license or an individual's request to have his/her limited license lifted and return to direct patient care. Further, under the adopted amendment, the Executive Director is authorized to review an individual's request for an exception to a stipulation in an existing eligibility or disciplinary Board order and to negotiate a resolution to the request, provided that the requested relief falls within the parameters of 22 TAC §213.33(b), (g), and (h) and is consistent with, and in the best interest of, the public health and safety. If the Executive Director is unable to resolve the request, or if the requested relief falls outside of the parameters of 22 TAC §213.33(b), (g), and (h), the individual will still be permitted to have his/her request heard and decided by the Committee. However, individuals whose requests are resolved by the Executive Director under the adopted amendment will not be required to appear before the Committee. Thus, the adopted amendment may save these individuals the time and potential expense of traveling to Austin, Texas to appear before the Committee and should enable individuals to have their requests resolved in a more timely and efficient manner.

The adopted amendment also requires the Executive Director to establish guidelines related to the review and approval of requests for exceptions to stipulations in existing eligibility and disciplinary orders of the Board, including how often such requests may be made. Further, the adopted amendment requires the Executive Director to report summaries of the decisions related to such requests to the Board at its regularly scheduled meetings.

These adopted requirements are necessary to ensure appropriate Board oversight of its delegated processes and consistent and equal treatment of all similarly situated individuals requesting exceptions to stipulations in existing eligibility and disciplinary orders of the Board.

How the Section Will Function. Adopted §211.7(h) authorizes the Executive Director to grant a request for a limited license or to negotiate an agreed order to return a limited licensee back to direct patient care. Further, the adopted amendment authorizes the Executive Director to negotiate an agreed resolution to a request for an exception to a stipulation contained in an existing order of the Board. The adopted amendment provides, however, that the Executive Director may not grant a request for an exception unless he/she is of the opinion that the requested relief falls within, and is consistent with, public safety and the parameters of 22 TAC §213.33(b), (g), and (h). The adopted amendment further provides that, in situations where the Executive Director cannot grant a request for an exception, the request may be scheduled without prejudice before the next practicable Committee meeting for review and determination. Further, the adopted amendment requires the Executive Director to establish guidelines for review and approval of requests for exceptions to existing Board orders, including how often such requests may be made. Finally, the adopted amendment requires the Executive Director to report summaries of decisions related to requests for exceptions to existing Board orders to the Board at its regularly scheduled meetings.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendment is adopted under the Occupations Code §§301.101, 301.151, 301.452, 301.453, 301.467, and 301.468.

Section 301.101(b) provides that, under the direction of the Board, the Executive Director shall perform the duties required by Chapter 301 or designated by the Board.

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Chapter 301, Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.453(a) provides that if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.452(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. Further, the Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.467(a) states that, on application, the Board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

Section 301.467(b) provides that an application to reinstate a revoked license: (i) may not be made before the first anniversary of the date of the revocation; and (ii) must be made in the manner and form the Board requires.

Section 301.467(c) provides that, if the Board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

Section 301.468(a) states that the Board may determine that an order denying a license application or suspending a license be probated. Further, a person subject to a probation order shall conform to each condition the Board sets as the terms of probation, including a condition: (i) limiting the practice of the person

to, or excluding, one or more specified activities of professional nursing or vocational nursing; (ii) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the Board; or (iii) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the Board.

Section 301.468(b) states that at the time the probation is granted, the Board shall establish the term of the probationary period.

Section 301.468(c) states that at any time while the person remains subject to the probation order, the Board may hold a hearing and rescind the probation and enforce the Board's original action in denying or suspending the license. Further, the hearing shall be called by the presiding officer of the Board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that: (i) sets the time and place for the hearing; and (ii) contains the charges or complaints against the probationer.

Section 301.468(d) provides that notice under §301.468(c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the Board's records.

Section 301.468(e) states that a hearing under §301.468 is limited to a determination of whether the person violated the terms of the probation order under §301.468(a) and whether the Board should: (i) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or (ii) enter an order denying, suspending, or revoking the person's license.

Section 301.468(f) states that if one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by: (i) a positive drug or alcohol test result; (ii) refusal to submit to a drug or alcohol test as required by the Board; or (iii) a letter of noncompliance from the peer assistance program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301295
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: April 17, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 305-6822

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CHAPTER 220. NURSE LICENSURE COMPACT

22 TAC §220.2

The Texas Board of Nursing (Board) adopts amendments to §220.2, relating to Issuance of a License by a Compact Party State. The amendments are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 754) and will not be republished.

Reasoned Justification. The amendments are adopted under the Occupations Code Chapter 304, particularly §304.003 and Articles 6(a)(4) and 8(c), and effectuate the adoption of uniform rules by party states. Texas is a member of the Nurse Licensure Compact (Compact). The Compact is enacted and entered into with all other jurisdictions that legally join in the Compact. The Occupations Code Chapter 304 sets forth the provisions of the Compact. The Occupations Code Chapter 304, Article 8(c) grants compact administrators the authority to develop uniform rules to facilitate and coordinate the implementation of the Compact. Model rules are routinely adopted and amended by the Nurse Licensure Compact Administrators (NLCA). Pursuant to Articles 6(a)(4) and 8(c), party state members of the Compact, such as Texas, are statutorily required to adopt the uniform rules. The uniform rules are necessary to facilitate the mobility of nurses and cooperation among the party states.

The NLCA formally amended the Compact Model Rules and Regulations on November 13, 2012. The Board is amending §220.2(f) and (g) to implement these changes. Currently, under existing §220.2(f), a nurse who is changing his/her primary state of residence from one party state to another may continue to practice under his/her former home state license and multistate privilege during the processing of his/her application in his/her new home state, for a period not to exceed 30 days. This time period, however, is often an inadequate amount of time for new party states to complete the application process. Often, documents from other jurisdictions must be received and reviewed and educational requirements must be verified. If a particular state has a large volume of applications, this process can take longer than 30 days. In an effort to avoid requiring a nurse to cease practicing while his/her application is being processed, adopted §220.2(f) provides a nurse an additional 60 days in which he/she may practice while his/her application remains pending with his/her new home state. It is anticipated that this additional time period will allow the new home state an appropriate amount of time to complete its application process and will permit nurses to continue working during the transition period into a new home state.

Adopted §220.2(g) is necessary for consistency with adopted §220.2(f). The adopted amendment to §220.2(g) makes clear that the licensure application in the new home state and the 90 day period contemplated in adopted §220.2(f) may be abated and stayed pending the resolution of an investigation of a nurse by a former home state.

How the Section Will Function. Adopted §220.2(f) states that a nurse changing his/her primary state of residence from one party state to another party state may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 90 days.

Adopted §220.2(g) states that the licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 90 day period stated in adopted §220.2(f) shall also be stayed until resolution of the pending investigation.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §304.003 and Chapter 304, Articles 6(a)(4) and 8(c).

Section 304.003 provides that the Board may adopt rules necessary to implement the Occupations Code Chapter 304.

Article (6)(a)(4) provides that party state nurse licensing boards have the authority to adopt uniform rules as provided under Article 8(c) of the Compact.

Article 8(c) provides that Compact administrators have the authority to develop uniform rules to facilitate and coordinate implementation of the Compact and the uniform rules shall be adopted by party states under Article 6(a)(4) of the Compact.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301303
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: April 21, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 305-6822

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §§38.1 - 38.16

The Executive Commissioner of the Texas Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§38.1 - 38.16, concerning the Children with Special Health Care Needs (CSHCN) Services Program, without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8675) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

As authorized by Health and Safety Code, Chapter 35, the CSHCN Services Program provides services to children younger than 21 years of age who have a chronic physical or developmental condition or to eligible clients with cystic fibrosis, regardless of age.

The amendments are necessary to add new definitions, make corrections, make revisions that simplify the eligibility determination process and allow clients a full six-month eligibility period, and improve clarity of the rules. Additionally, specific references to program fees (related to reimbursement rates for covered medical, dental, and other services) are removed from the rules to allow the program latitude to adjust rates to remain within budgetary limitations. Rates are determined in policy, and current program rates are accessible to the public via the program's claim administrator's Online Fee Lookup website.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 38.1 - 38.16 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §§38.1, 38.5 - 38.9, and 38.11 - 38.16 improve flow, accuracy, and clarity. Amendments to §38.2 include new definitions and revisions to existing definitions for terms used within the rules. Amendments to §38.3 add language necessary for clarification of the CSHCN Services Program eligibility requirements. Amendments to §38.4 clarify existing language and add new language for benefits and limitations and increase readability. Amendments to §38.10 clarify existing language and remove program fees and payment methodologies (related to reimbursement rates for covered medical, dental, and other services) so that the program has flexibility to adjust rates when necessary to remain within budgetary limitations.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter, a regulatory consultant with the Coalition for Nurses in Advanced Practice, was not against the rules in their entirety; however, the commenter suggested recommendations for changes as discussed in the summary of comments as follows.

Comment: Concerning the definition of "diagnosis and evaluation services" in §38.2(21), the commenter stated that it should be amended to include advanced practice registered nurses (APRN) as practitioners who may evaluate and diagnose children for eligibility.

Response: The commission disagrees with the comment since 22 TAC §221.13(d) ("Core Standards for Advanced Practice") states that "When providing medical aspects of care, advanced practice nurses shall utilize mechanisms which provide authority for that care. These mechanisms may include, but are not limited to, Protocols or other written authorization. This shall not be construed as requiring authority for nursing aspects of care."

Also, the Occupations Code, §151.002(a)(13) ("Definitions") defines "practicing medicine" as "the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services."

Additionally, the Occupations Code, §155.001 ("License Required") states that "A person may not practice medicine in this state unless the person holds a license issued under this subtitle." No change was made to this rule as a result of the comment.

Comment: Concerning §38.3(a)(1), the commenter suggested that APRNs be allowed to certify that clients continue to meet the medical eligibility requirements based on a physical examination in the previous 12 months.

Response: The commission disagrees with the comment since 22 TAC §221.13(d) states that "When providing medical aspects of care, advanced practice nurses shall utilize mechanisms which provide authority for that care. These mechanisms may include, but are not limited to, Protocols or other written authorization. This shall not be construed as requiring authority for nursing aspects of care."

Also, the Occupations Code, §151.002(a)(13) defines "practicing medicine" as "the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services."

Additionally, the Occupations Code, §155.001 states that "A person may not practice medicine in this state unless the person holds a license issued under this subtitle." The quoted provisions are relevant because §38.3(a)(1) requires an explicit determination and documentation of the diagnosis. No change was made to this rule as a result of the comment.

Comment: Concerning §38.4(b)(3)(A), the commenter stated that APRNs should be allowed to provide medical or dental assessment and treatment services.

Response: The commission disagrees with the comment since 22 TAC §221.13(d) states that "When providing medical aspects of care, advanced practice nurses shall utilize mechanisms which provide authority for that care. These mechanisms may include, but are not limited to, Protocols or other written authorization. This shall not be construed as requiring authority for nursing aspects of care."

Also, the Occupations Code, §151.002(a)(13) defines "practicing medicine" as "the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services."

Additionally, the Occupations Code, §155.001 states that "A person may not practice medicine in this state unless the person holds a license issued under this subtitle." Section 38.4(b)(3)(A) as currently written explicitly allows for "All practitioners must be licensed by the State of Texas, enrolled as providers in the program, and practicing within the scope of their respective licenses or registrations." No change was made to this rule as a result of the comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §§35.003, 35.004, 35.005, and 35.006; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Texas Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301304

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: April 21, 2013
Proposal publication date: November 2, 2012
For further information, please call: (512) 776-6972

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CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§200.1 - 200.4, 200.6 - 200.8, 200.10

The Executive Commissioner of the Texas Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§200.1 - 200.4, 200.6 - 200.8, and 200.10, concerning the reporting of a preventable adverse event (PAE). Section 200.1 is adopted with changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9449). Sections 200.2 - 200.4, 200.6 - 200.8, and 200.10 are adopted without changes, and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

The Health and Safety Code, Chapter 98, requires any health care facility to report the incidence of PAEs as defined in that chapter. The amendments are necessary to define and add the reporting of designated PAEs.

The department is using the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) web reporting application for collecting data on designated PAEs in accordance with Health and Safety Code, Chapter 98, and this chapter. NHSN is capable of collecting specific, but limited PAEs.

The Centers for Medicare and Medicaid Services currently require that facilities report catheter associated urinary tract infection (CAUTI) as part of their Value Based Purchasing program under the Inpatient Prospective Payment System. Initially, the department will collect CAUTI data since it is currently reported by facilities to NHSN. As the department evaluates the resources needed to collect additional PAE data, it will promulgate additional rule amendments adding designated PAEs to report.

SECTION-BY-SECTION SUMMARY

The chapter title is amended to align with the title of the Health and Safety Code, Chapter 98 (Reporting of Health Care-Associated Infections and Preventable Adverse Events). Also, the term "health care-associated infection" replaced the term "healthcare-associated" in §§200.1, 200.2, 200.6, and 200.8, and the term "health care" replaced the term "healthcare" in §§200.1, 200.6, and 200.10 to be consistent with Health and Safety Code, Chapter 98.

Section 200.1 is amended to revise a definition of the International Classification of Disease (ICD) and to add definitions for PAE, urinary catheter, and urinary tract infection (UTI). The numbering of the paragraphs is amended due to these additions.

Section 200.2 is amended to add the PAEs to the name of the rule and to subsections (a), (c), and (d) for reporting guidelines by health care facilities.

Section 200.3(a), (b), (d), and (e)(2) is amended to add how to report the PAEs by health care facilities.

Section 200.4(c) is amended to add the requirement that health care facilities report on urinary catheter device days and UTIs. Subsequent subsections are amended to change the lettering due to this addition.

Section 200.6(b) and (f) is amended to add the reporting of PAEs. Rule references are corrected in subsections (b) - (d) to be consistent with the renumbering of §200.4 of this title. Subsection (e) was added to include the timeframe for reporting urinary catheter device days and UTIs.

Section 200.7(a) is amended to add PAEs to the name of the rule and reporting timeframes.

Section 200.8(a) and (b) is amended to add PAEs to the verification process and corrections to errors and disputes.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received from one individual regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The individual was not against the rules in their entirety but suggested recommendations for change as discussed in this summary of comments.

COMMENT: The commenter asked that the department define "PAE" in the Chapter 200 rule text rather than referencing Health and Safety Code, Chapter 98.

RESPONSE: The department agrees in part and disagrees with the commenter and believes referencing state statute is adequate. The Texas Legislature did not define "preventable adverse event" in the statute, probably because it is not susceptible to definition. The department believes it has adequately defined the events that are to be reported. The department also contends that by referencing a statute the department would remain in compliance if the Texas Legislature makes changes to the "preventable adverse event" definition. However, the department did revise §200.1(20) to replace the definition of "Preventable adverse event" with the acronym "PAE" and to state that there are examples of PAEs in the Health and Safety Code, §98.1045.

COMMENT: The commenter also inquired as to the manner of future reporting of PAEs.

RESPONSE: The department replies that the PAEs that are not reported through the Centers for Disease Control and Prevention are currently under study for reporting requirements and methodology and providers will be notified of any future reporting changes in accordance with the notification requirement of 90 calendar days in advance of a change in §200.5 of this title (relating to Data to Report). No change was made to the rules as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, §98.101, which authorizes the Executive Commissioner to adopt rules to implement Chapter 98; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Texas Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§200.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Ambulatory surgical center--A facility licensed under Texas Health and Safety Code, Chapter 243.

(2) Central line--An intravascular catheter that terminates at or close to the heart or in one of the great vessels which is used for infusion, withdrawal of blood or hemodynamic monitoring.

(3) CMS--Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services.

(4) Comments--Notes or explanations submitted by the health care facilities concerning the department's compilation and summary of the facilities' data that is made available to the public as described in the Texas Health and Safety Code, §98.106.

(5) Data--Facility and patient level information reported to the department for the purposes of monitoring health care-associated infections.

(6) Data summary--Facility level information prepared by the department for each health care facility required to report in this state to facilitate comparisons of risk-adjusted infection rates.

(7) Department--Department of State Health Services.

(8) Device days--The number of patients in a special care setting who have one or more central lines for each day of the month, determined at the same time each day of the reporting quarter.

(9) Facility contact--Person identified by the health care facility responsible for coordinating communications related to data submission, verification and approval of data summary.

(10) Facility Identification Number--The unique, distinguishable, uniform number used to identify each health care facility.

(11) General hospital--A hospital licensed under Texas Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state.

(12) Great vessels--Primary blood vessels to include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, common femoral veins, and in neonates, the umbilical artery or umbilical vein.

(13) Health care-associated infection (HAI)--Localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(14) Health care-associated infection data--Patient level information identifying the patient, procedures and events required by this chapter, infections resulting from those procedures or events, and causative pathogens when laboratory confirmed.

(15) Health care facility or facility--A general hospital or ambulatory surgery center.

(16) ICD-CM--The International Classification of Diseases, Clinical Modification that is used to code and classify morbidity data from the inpatient and outpatient records of hospitals and physician offices.

(17) Inpatient Treatment--An admission to an acute care hospital of greater than 24 hours for treatment of a post operative surgical site infection.

(18) NHSN--Federal Centers for Disease Control and Prevention's National Healthcare Safety Network or its successor.

(19) Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, as defined in Texas Health and Safety Code, §241.003.

(20) PAE--Preventable adverse event. Examples of PAEs are given in Texas Health and Safety Code, §98.1045.

(21) Reporting quarters--First quarter: January 1 through March 31; Second quarter: April 1 through June 30; Third quarter: July 1 through September 30; Fourth quarter: October 1 through December 31.

(22) Risk adjustment--A statistical method to account for a patient's severity of illness and the likelihood of development of a health care-associated infection (e.g., duration of procedure in minutes, wound class, and American Society of Anesthesiology (ASA) score).

(23) Special care setting--A unit or service of a general, pediatric or adolescent hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit and a critical care unit.

(24) Urinary catheter--As defined by the Centers for Disease Control and Prevention's National Healthcare Safety Network at www.cdc.gov/nhsn or its successor.

(25) Urinary tract infection (UTI)--As defined by the Centers for Disease Control and Prevention's National Healthcare Safety Network at www.cdc.gov/nhsn or its successor. A UTI associated with an indwelling urinary catheter is a catheter associated urinary tract infection (CAUTI).

(26) Validation--The process of comparing data submissions to original patient and facility records to ascertain that data submission processes are accurate.

(27) Verification--Review of data submitted electronically to assure completeness and internal consistency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2013.

TRD-201301305
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: November 30, 2012
For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§291.22, 291.102, 291.105, and 291.113.

Section 291.113 is adopted *with change* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8731). Sections 291.22, 291.102, and 291.105 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011, the 82nd Legislature passed Senate Bill (SB) 573, relating to the granting of certificates of public convenience and necessity (CCNs). SB 573 amended Texas Water Code (TWC), §§13.245, 13.2451, 13.246, and 13.254. TWC, §13.245(b) and (c-1) - (c-3) were amended to specify that if a municipality has not consented to the inclusion of a CCN within its boundaries or extraterritorial jurisdiction (ETJ) before the 180th day after a landowner or retail public utility has made a formal request for service then the TCEQ may grant the CCN to the retail public utility without the municipality's consent under certain conditions. SB 573 also provided additional criteria which the TCEQ shall consider before it grants the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed according to the municipality's standards. TWC, §13.245(c-4) and (c-5) were added by SB 573 to specify the counties in which the provisions of the TWC, §13.254(c-1) - (c-3) do not apply.

TWC, §13.2451(b) was amended by SB 573 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by TWC, §13.246(h). TWC, §13.2451(b-1) and (b-2) were added to specify the counties in which the provision does not apply.

TWC, §13.246(h) was amended by SB 573 to stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason.

TWC, §13.254 was amended by SB 573 to change the requirements for when the TCEQ may revoke a CCN, modify the requirements for petitioning for the release of land from a CCN, and also shorten the TCEQ's review period for reviewing a release petition from 90 to 60 calendar days. TWC, §13.254(a-5) and (a-6) created a process allowing a landowner of at least a 25-acre tract to request an expedited release from a CCN in counties meeting specific criteria. TWC, §13.254(a-7) added requirements for notice of utility rate changes. TWC, §13.254(a-8) modified the criteria for reviewing a release petition filed under TWC, §13.254(a-1). TWC, §13.254(a-9) - (a-11) were added to specify the counties in which the modifications to the CCN release process made by TWC, §13.254(a-8) do not apply.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts revisions to 30 TAC Chapter 293, Water Districts.

Section by Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes to conform with Texas Register requirements.

§291.22, Notice of Intent to Change Rates

The commission amends §291.22(a)(4) to remove the word "and"; add §291.22(a)(5) - (7); and renumber existing subsection (a)(5). The adopted amendment specifies that a utility shall include with the statement of intent provided to each landowner or ratepayer: a notice of a proceeding under §291.113, the reason or reasons for the proposed rate change, and any bill payment assistance program available to low-income ratepayers. The commission adopts this amendment to implement the changes made to TWC, §13.254, in SB 573 and for consistency with Texas Register requirements.

§291.102, Criteria for Considering and Granting Certificates or Amendments

The commission amends §291.102(h) to specify that an applicant for a CCN that has land removed from its proposed service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water and/or sewer system of another person. The commission adopts this amendment to implement the changes made to TWC, §13.246(h) in SB 573.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission amends §291.105(b)(2) by removing the reference of "paragraph (3)" and replacing it with a reference to "paragraphs (3) - (7)." The adopted amendment specifies that, except as provided by paragraphs (3) - (7), the commission may not grant a CCN to a retail public utility for a service area within the boundaries or ETJ of a municipality without the consent of the municipality. The municipality may not unreasonably withhold its consent. As a condition of the consent, a municipality may require that all water and/or sewer facilities be designed and constructed in accordance with the municipality's standards for facilities. The commission adopts this amendment to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) and its subdivisions to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) to denote that the commission may grant a CCN to a retail public utility without a municipality's consent under certain circumstances as outlined in adopted §291.105(b)(4)(A) - (C) if the municipality has not consented under §291.105(b) before the 180th day after the date a landowner or a retail public utility submits a formal request for service to the municipality. Adopted §291.105(b)(4)(A) specifies that the commission may grant the CCN without the municipality's consent if the commission makes findings required by §291.105(b)(3). Adopted §291.105(b)(4)(B) specifies that the commission may grant the CCN without the municipality's consent if the municipality has not entered into a binding commitment to serve the requested area on or before the 180th day after the date the formal request was made. In addition, the commission adds §291.105(b)(4)(C) and its subdivisions to specify that the commission may grant the CCN without the municipality's consent if the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process; or if the landowner or retail public utility have not entered into a contract for water and/or sewer services with the municipality. The commission also adds §291.105(b)(5) to denote that if a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification. The commission adopts this addition to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(6) to implement changes made to TWC, §13.245(b) by SB 573 by stipulating that the commission must include as a condition of a CCN granted under TWC, §13.245(c-1) or (c-2) that all water and sewer facilities shall be designed and constructed in accordance with the municipality's standards for water and sewer facilities. The commission adds §291.105(b)(7) to specify that paragraphs (4) - (6) do not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this addition to implement the changes made to TWC, §13.245(b) by SB 573. The commission further renumbers existing §291.105(b)(4) and (5) to §291.105(b)(8) and (9) for consistency purposes.

The commission amends §291.105(c)(1) to specify that, except as provided by paragraph (2), if a municipality extends its ETJ to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its CCN area under the rights granted by its certificate and Chapter 291. The adopted rule changes implement TWC, §13.2451(a) - (b-3) as amended by SB 573. The commission amends §291.105(c)(2), adds subsection (c)(3), and renumbers existing subsection (c)(3) to implement changes made to TWC, §13.2451(a) - (b-3) by SB 573. The adopted amendment specifies that the commission may not extend a municipality's CCN beyond its ETJ if an owner of land that is located wholly or partly outside the ETJ elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h), this subsection does not apply to a transfer of a certificate as approved by the commission. The adopted amendment also specifies that paragraph (2) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

§291.113, Revocation or Amendment of Certificate

The commission amends §291.113(a) - (d) and (h) and adds §291.113(r) - (v). Section 291.113(a) is amended to remove a reference to the source of a motion or petition to revoke or amend a CCN. Section 291.113(b) is amended to specify that the fact that the certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of a petitioner's land and the receipt of services from an alternative provider. The adopted amendment to this subsection also requires that on the day the petitioner submits the petition to the commission, the petitioner shall send a copy of a petition to the certificate holder. The commission adopts this amendment to implement changes made to TWC, §13.245 by SB 573. The commission amends §291.113(b)(1)(C) to remove the word "and" and adds §291.113(b)(1)(D) and (E) to provide additional criteria that a petitioner must demonstrate when requesting to have the petitioner's land removed from a CCN under §291.112(a). Section 291.113(b)(1)(D) is added to denote that a petitioner shall provide a written request for service to the certificate holder identifying the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder. Section 291.113(b)(1)(E) is added to specify that the petitioner shall also identify the flow and pressure requirements and specific

infrastructure needs, including line size and system capacity for the required level of fire protection requested. In addition, the commission renumbers existing §291.113(b)(1)(D) - (F) for consistency purposes. The adopted rule changes implement TWC, §13.245(a-1) as amended by SB 573. Furthermore, the commission amends §291.113(b)(3)(B) to clarify that the commission shall consider whether the certificate holder is capable of providing the service at the approximate cost and that the alternative provider is capable of providing a comparable level of service. The adopted rule changes implement TWC, §13.245(a-1) as amended by SB 573. Moreover, the commission amends §291.113(b)(4) to remove the phrase "is capable of providing" and instead specifies that the alternate service provider must possess the financial, managerial, and technical capability to provide continuous and adequate service to the area being removed from the certificate. Also, the adopted amendment specifies that service must be provided at a reasonable cost to support the existing and projected service demands in the area. The commission adopts this amendment to implement changes made to TWC, §13.245(a-1) by SB 573. The commission amends §291.113(c) to update cross-references to other subsections. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission amends §291.113(d) by changing the time frame from 90 to 60 calendar days for which the commission or executive director shall grant or deny the petition to remove the property from the certificated area to implement changes made to TWC by SB 573. The commission also amends §291.113(h) to clarify that a retail public utility may not provide retail water and/or sewer service in an area that has been decertified under this section unless the retail public utility or petitioner provides compensation for any property rendered useless or valueless. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(r) to denote that an owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for the expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Smith County, a county with a population of a least one million, or a county adjacent to a county with a population of at least one million (except for Medina County). The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(s) to require the petitioner to provide a copy of the petition to the CCN holder, specify that the CCN holder may file a response to the petition, and to indicate that the commission or the executive director shall grant a petition received under adopted subsection (r) no later than 60 calendar days after the date the landowner files the petition. The commission or the executive director may not deny a petition filed under adopted subsection (r) based on the fact that a certificate holder is a borrower of federal debt. The commission may require an award of compensation by the petitioner to a decertified retail public utility. In response to comments, §291.113(s) was amended to remove the phrase "required by a retail public utility seeking to serve the decertified area" to be consistent with SB 573, which allows for compensation by the petitioner. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission adds §291.113(t) to specify that the commission is not required to find that the proposed alternative provider is capable of providing better service than the CCN holder, but only that the alternative provider is capable of providing service to the area that a petitioner seeks to have released from a CCN under subsection (b) if the CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(u) to specify that subsection (t) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Lastly, the commission adds §291.113(v) to indicate that a certificate holder that has land removed in accordance with this section may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573.

Final Regulatory Impact Analysis Determination

The commission has reviewed these adopted amendments to Chapter 291 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). Here, the adopted amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend other rules in Chapter 291 to remain consistent with the statutory changes set forth in SB 573. This rulemaking initiative adopts modifications to the rules within Chapter 291 to accomplish the following: (1) altering the conditions under which the TCEQ may grant CCNs within a municipality's ETJ without consent from that municipality; (2) specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by the TWC; (3) stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason; (4) change the requirements for when the TCEQ may revoke a CCN and shorten the review period for an expedited release from 90 to 60 calendar days; (5) create a process allowing a landowner of at least a 25-acre tract to request expedited release in counties meeting specific criteria; and (6) add additional requirements for a utility rate change notice. While the commission has jurisdiction over retail public utilities and authority to draft rules impacting those utilities, these adopted changes to the operating processes of water and/or sewer utilities are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a tak-

ing under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapter 13 made by the legislature in SB 573. The adopted rules would substantially advance this stated purpose because these changes impact the abilities of municipalities and retail public utilities to obtain a CCN or have a CCN revoked, and impact the requirements for notice of rate changes by investor-owned utilities.

Promulgation and enforcement of these adopted rules regarding the operation of water and/or sewer utilities would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in SB 573 also do not impact private real property rights. Specifically, private real property rights do not pertain to certification of retail water and/or sewer service areas by the commission. Thus, these adopted rules do not impose a burden on private real property but instead benefit society by improving and streamlining the process by which certain areas are certified for water and/or sewer service, which should ultimately improve the quality of service that is provided to utility customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on December 4, 2012. The comment period closed on December 10, 2012. The commission received comments from Aqua Water Supply Corporation (Aqua WSC), Markout Water Supply Corporation (Markout WSC), SouthWest Water Company (SWWC), and Texas Rural Water Association (TRWA).

All commenters suggested changes to proposed §291.113, related to the implementation of SB 573, as described in the RESPONSE TO COMMENTS section of the preamble.

Response to Comments

Markout WSC commented that §291.113(b) would be a burden to water supply corporations and districts that have federal indebtedness. In addition, Markout WSC expressed concern with §291.113(h) regarding the compensation to a retail public utility for removal of property from the retail public utility's certificated service area (also known as the CCN area).

The commission responds that this rulemaking merely adopts and implements new statutory requirements enacted by the 82nd Legislature, 2011. The commission has no authority to substantively alter the statutory requirements or omit any of them from the commission's rules. No changes have been made in response to this comment.

Aqua WSC, SWWC, and TRWA expressed concern regarding the "timing" of compensation under TWC, §13.254(a-5). Each commenter recommended changes to §291.113(i) to address the timing of compensation; specifically, the commenters requested that the timing of the determination of compensation be based on the date of issuance of a decertification order under TWC, §13.254(a-5).

The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters assert that the legislature intended for a determination of compensation to take place when an expedited release is granted. Newly added TWC, §13.254(a-6) provides that compensation to a decertified utility be granted "as otherwise provided by this section." TWC, §13.254 provides that compensation take place when another utility seeks to provide service in the decertified area. Texas Government Code, §311.021 provides that in construing a statute, the legislative history of the bill may be considered. The Legislative Budget Board's bill analysis for SB 573 states that under the legislation, "compensation would likely be limited and uncertain, because the award of compensation would not occur until another retail public utility would propose to serve the area." Based on the plain language of TWC, §13.254, and the Legislative Budget Board's analysis, the commission has construed SB 573 to expressly require that a determination of compensation be made as provided for in TWC, §13.254(d) - (g). Specifically, a determination of whether compensation should be given to the decertified utility will occur at the time another utility seeks to provide service in the decertified area. No changes have been made in response to these comments.

Aqua WSC, SWWC, and TRWA expressed concern that the proposed rule does not provide that the petitioner agree to the independent appraiser for determination of compensation required under §291.113(r). SWWC and TRWA recommended changes to §291.113(j) to specify that the petitioner should participate in the determination of compensation required under §291.113(r).

The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters have asserted that the legislature intended for compensation to a decertified utility be made to the utility by the petitioner requesting the decertification. For the reasons mentioned elsewhere within this preamble, the commission has construed SB 573 to expressly require that a determination of compensation be made as provided for in TWC, §13.254(d) - (g). Specifically, the determination of any amount of compensation owed to a decertified utility will be made by an independent appraiser agreed to by that utility and the utility seeking to provide service. No change has been made in response to these comments.

Aqua WSC, SWWC, and TRWA expressed concern that §291.113(s) does not allow that the petitioner provide compensation required under §291.113(r). All three commenters recommended changes to §291.113(s). Aqua WSC and TRWA recommended that a limiting reference to "retail public utility" be removed from §291.113(s). SWWC recommended that a reference to "petitioner in the case of releases granted under subsection (r) of this section" be added.

The commission concurs that newly enacted TWC, §13.254(a-6) provides for "an award of compensation by the petitioner" and agrees with the commenters that a revision of the proposed language in §291.113(s) is appropriate. In response to these comments, the commission revised §291.113(s) to harmonize the commenters' requested edits to be consistent with SB 573.

Aqua WSC and TRWA expressed concern that the proposed rule does not provide a procedure for the timing of payment of compensation required under §291.113(r). TRWA requests that the commission amend the proposed rule language to require that compensation be paid by the petitioner upon the issuance of the commission's order setting the compensation amount. TRWA further recommends that §291.113(h) be changed to require that compensation be paid upon the issuance of the commission's order setting compensation.

The commission responds that because SB 573 does not provide for compensation at the time the decertification petition is granted, the proposed addition would be inappropriate and unnecessary. No change has been made in response to these comments.

TRWA proposes that the rule language be modified to stipulate that the use of the term "service" in §291.113(r) has the meaning set forth in TWC, §13.002 and the commission's rules in §291.3.

The commission responds that definitions set forth in TWC, §13.002, and the commission's rules in §291.3 apply to the entirety of those chapters. There is no need to specify in any subchapter or section that the definitions specifically apply to those subchapters or sections. No change has been made in response to this comment.

SWWC recommended that the language "or its successors" be added to §291.113(s).

The commission responds that because SB 573 provides only for compensation to be paid by a petitioner for decertification, the proposed addition would be inappropriate and unnecessary. No change has been made in response to this comment.

Aqua WSC recommended that the language "as otherwise provided by this section" be removed from §291.113(s).

The commission responds that this language was adopted directly from SB 573 and serves to effectuate the intent of the statute. No change has been made in response to this comment.

Aqua WSC supports the notification requirement in §291.113(s), which requires a petitioner on the same day that the petition is submitted to the commission, to also send via certified mail, a copy of the petition to the CCN holder.

The commission acknowledges the commenter's support of the rule. No change has been made in response to this comment.

SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

30 TAC §291.22

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §13.254(a-7).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

30 TAC §§291.102, 291.105, 291.113

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §§13.245(b) - (c-5), 13.2451(a) - (b-3), 13.246(h), and 13.254(a-1) - (a-3), (a-5), (a-6), (a-8) - (a-11), and (h).

§291.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code (TWC), §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive

director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsections (b) or (r) of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 60 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN under TWC, §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under TWC, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.

(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission or the executive director shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission or the executive director may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation is governed by subsections (h) - (k) of this section.

(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§293.11, 293.32, 293.41, 293.51, and 293.81 *without changes* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8741) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The 82nd Legislature, 2011, passed House Bill (HB) 679 and HB 1901 and Senate Bill (SB) 18, SB 512, SB 914, and SB 1234. HB 679 increased the allowable district change order amount and amended Texas Water Code (TWC), §49.273(i). HB 1901 applies to the executive director's bond approval provisions. HB 1901 amended TWC, §§49.181(a) and (h), 49.052(f), and 49.183(d) to allow an exemption from executive director approval for bonds issued by a public utility agency. SB 18 amended TWC, §54.209 to place additional limits on eminent domain power of a municipal utility district (MUD) outside of its corporate boundary. SB 512 amended TWC, §53.063, to redefine the qualifications of supervisors of a fresh water supply district (FWSD). SB 914 amended TWC, §49.181, to allow an exemption from executive director approval for bonds issued by a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority. SB 1234 amended Local Government Code, §375.022, to allow a municipal management district (MMD) to include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district."

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with TWC, Chapters 12, 36, and 49 - 67. The commission oversees approximately 1,500 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of most general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction, project design, and completion.

The adopted rulemaking would add or amend requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375. The adopted revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 375 from HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. Specifically, the adopted rules would increase the amount of construction project change orders exempt from commission review from $25,000 - $50,000 (HB 679); provide special provisions which exempt bonds issued by a public utility agency from executive director approval (HB 1901); place additional limits on the eminent domain power of a MUD outside of its corporate boundary (SB 18); provide an alternative election qualification for an FWSD director (SB 512); provide for the exemption of a conservation and reclamation district located in at least three counties that has the rights, powers, privileges, and functions applicable to a river authority from the requirement of obtaining prior bond approval from the commission (SB 914); and allow an MMD to include within its creation petition a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district" (SB 1234).

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts revisions to 30 TAC Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission adopts administrative changes to conform with Texas Register requirements.

§293.11, Information Required to Accompany Applications for Creation of Districts

The commission adopts amendments to §293.11(j)(1)(A) and (D) to stipulate that a MMD may include, within its creation petition, a boundary description using verifiable landmarks and a descriptive name followed by the phrase "improvement district." This adopted rule change is consistent with Local Government Code, Chapter 375, as amended by SB 1234 and with TWC, Chapters 49 and 54.

§293.32, Qualifications of Directors

The commission adopts an amendment to §293.32(a)(1)(B) to reflect a modification for election qualifications of an FWSD director. This adopted rule change is consistent with TWC, §53.063, as amended by SB 512.

§293.41, Approval of Projects and Issuance of Bonds

The commission adopts amendments to §293.41(a) and (d) to reflect that a district is not required to obtain commission approval of its bonds if the district is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; or a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections. The adopted amendment is consistent with Local Government Code, Chapter 572; TWC, Chapter 30; and TWC, §49.181, as amended by HB 1901 and SB 914.

§293.51, Land and Easement Acquisition

The commission adopts amendments to §293.51(e)(2) - (4) to reduce potential confusion by reflecting a MUD's restriction in the use of eminent domain powers outside of its boundaries. The adopted amendment is consistent with TWC, §54.209, as

amended by SB 18. The commission also adopts an amendment to §293.51(g) to correct a misspelling.

§293.81, Change Orders

The commission adopts amendments to §293.81(2) and (3) to reflect an increase to $50,000 to an allowable change order consistent with TWC, §49.273(i), as amended by HB 679.

Final Regulatory Impact Analysis Determination

The commission has reviewed these adopted amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). The adopted amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend rules in Chapter 293 to remain consistent with the statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. As to these six enacted bills, this rulemaking initiative modifies rules within Chapter 293 to accomplish the following: (1) providing authority to approve a change order that involves an increase or decrease of $50,000 or less; (2) providing exemption from the executive director's approval of bonds issued by a public utility agency having at least one of the participating public entities being a MUD located entirely in only two counties, outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections; (3) limiting the circumstances under which a district may exercise its authority to exercise the power of eminent domain outside the district's boundaries; (4) modifying the qualifications to be a supervisor of an FWSD; (5) providing exemption from the executive director's approval of bonds issued by a district that is a river authority as defined by TWC, Chapter 30, located entirely in at least three counties; and (6) allowing in the creation petition of an MMD a description of its boundaries by verifiable landmarks and including its name that is generally descriptive of its location followed by "Management District" or "Improvement District." While the commission has general jurisdiction over districts and authority to adopt rules impacting districts, these adopted changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapters 12, 36, and 49 - 67 made in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234. The adopted rules would substantially advance this stated purpose because these adopted changes impact a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from executive director approval, further limit eminent domain powers of a MUD outside its boundary, modify the election qualifications for an FWSD director, and exempt bonds issued by certain multi-county districts from the executive director's approval.

Promulgation and enforcement of these adopted rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in HB 679, HB 1901, SB 18, SB 512, SB 914, and SB 1234 also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to increase the allowable change order amount, exempt bonds issued by a public utility agency from the executive director's approval, further limit eminent domain powers of a MUD outside its boundary, modify the election qualifications for an FWSD director, or exempt bonds issued by certain multi-county districts from commission approval. In addition, while the issue of eminent domain may pertain to private real property rights, the adopted rule changes implementing SB 18 do not impact these property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these adopted rules do not impose a burden on private real property but instead benefit society by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the CMP.

Public Comment

The commission held a public hearing on December 4, 2012. The comment period closed on December 10, 2012. The commission received no comments on the proposed changes to Chapter 293.

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §49.052(f) and §49.181(a) and (h).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. APPOINTMENT OF DIRECTORS

30 TAC §293.32

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §53.063.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.41, §293.51

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §49.181(h) and §54.209.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §49.273(i).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.30

The General Land Office (GLO) adopts amendments to 31 TAC §15.30, relating to the Certification Status of the City of South Padre Island Dune Protection and Beach Access Plan (Plan).

The amendments are adopted without changes to the proposed text published in the January 18, 2013, issue of the *Texas Register* (38 TexReg 285) and will not be republished.

BACKGROUND AND REASONED JUSTIFICATION

Pursuant to Texas Natural Resources Code §33.607 of the Coastal Public Lands Management Act and 31 TAC §15.17 of the GLO's Beach/Dune Rules, the City of South Padre Island (City) has prepared an Erosion Response Plan (ERP) and submitted it to the GLO for certification as an amendment to its Plan. The ERP was adopted by the City Council of the City of South Padre Island as Ordinance No. 12-09 on August 1, 2012.

Pursuant to Texas Natural Resources Code §61.015 of the Open Beaches Act and 31 TAC §15.3(o) the Beach/Dune Rules, a local government with jurisdiction over Gulf beaches is required to submit its Plan and any Plan amendments to the GLO for review and approval. The GLO must certify by rule that each Plan or Plan amendment is consistent with state law, including the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.16, 15.21 - 15.36, 15.41, and 15.42).

In accordance with Texas Natural Resources Code §33.607 and 31 TAC §15.17, the City's ERP incorporates several planning elements designed to reduce public expenditures due to erosion and storm damage to public and private property. The ERP, among other provisions, (1) recognizes the previously established Historic Building Line (HBL) as the building setback line that will help prevent erosion and storm damage; (2) identifies goals and methods for dune enhancement and restoration; (3) addresses improvements that will enhance public beach access and minimize storm damage to access ways; (4) describes procedures for inspecting beach access points before and after storms; and (5) discusses potential funding sources to support ERP implementation.

In light of the applicable statutory and regulatory requirements, the ERP and the associated Plan amendments are consistent with state law. Accordingly, the adopted rule amendments to §15.30 add a new subsection (d) certifying as consistent with state law the inclusion of the ERP in the City's Plan. In addition, the adopted rule amendments to §15.30, including the title, clarify that the "Town" of South Padre Island is now called the "City" of South Padre Island, in light of the home rule charter adopted by the City of South Padre Island in 2009.

The justification for adoption of the amendments is that implementing the ERP will reduce public expenditures due to storm damage and erosion, increase protection for public and private properties and infrastructure located in coastal areas, and reduce the risk to life and property from storm events. Key elements of the ERP such as the building setback line (i.e., the HBL) will reduce the hazards, damage, and economic losses that occur when buildings are subjected to erosion and storm surges. By encouraging building further landward, the setback line will preserve the area seaward of the setback line and minimize the number of structures that locate in vulnerable areas. Additional public benefits that justify adoption of the amendments include the ERP's goals and plans for dune enhancement and public beach access. A healthy dune system serves as a natural buffer against normal storm tides. This natural buffer helps reduce the risk to life and property from storm damage and helps reduce the public expenses of disaster relief. By addressing dune enhancement and restoration, the ERP will assist the City of South Padre Island in focusing on areas that are vulnerable to storm surge and flooding that may cause damage to public infrastructure and private properties. The ERP will also enhance public beach access by providing a framework for post-storm beach access assessment procedures.

RESPONSE TO PUBLIC COMMENT

No public comments were received regarding the rule amendments as proposed.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments to 31 TAC §15.30 are subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendments for consistency and determined that the amendments are consistent with the Beach/Dune Rules and the CMP goals and policies. No comments were received from the public or the GLO Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendments are consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §33.607 and §61.011, relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and to reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and 61.015 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301291
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: April 17, 2013
Proposal publication date: January 18, 2013
For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.29,

concerning Sexual Assault/Family Violence Investigator Certificate, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10150) and will not be republished.

The amendment adds language to 37 TAC §221.29, Sexual Assault/Family Violence Investigator Certificate, and changes the name of the certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2013.

TRD-201301254
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: May 2, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 936-7713

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37 TAC §221.41

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §221.41, concerning Court Security Specialist Certificate, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10151) and will not be republished.

This new rule is necessary because it provides recognition for court security officers.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2013.

TRD-201301255
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: May 2, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.2, concerning Administrative Penalties, with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10151) and will be republished. The changes from the proposed version remove subsection (d)(4) which stated "actual or potential harm to the public's expectation of commission licensees being trustworthy, demonstrating good-judgment, and maintaining obedience to the law;" and renumber the remaining paragraphs accordingly.

The amendment adds language to 37 TAC §223.2, Administrative Penalties, and establishes base penalties and defines mitigating circumstances.

No written comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151 and §1701.507.

§223.2. Administrative Penalties.

(a) In addition to any other action or penalty authorized by law, the commission may impose an administrative penalty against a law enforcement agency or governmental entity for violations of commission statutes or rules.

(b) In determining total penalty amounts, the commission shall consider:

(1) the seriousness of the violation;

(2) the respondent's history of violations;

(3) the amount necessary to deter future violations;

(4) efforts made by the respondent to correct the violation; and

(5) any other matter that justice may require.

(c) The following is a nonexclusive list of the per day per violation base penalty amounts for:

(1) Appointing an unlicensed person as a peace officer or jailer, $1,000;

(2) Appointing as a peace officer or jailer a person disqualified because of criminal history, $1,000;

(3) Appointing a person who does not meet minimum licensing or appointment standards as a peace officer or jailer, $750;

(4) Appointing or continued appointment of a person as a peace officer or jailer with a revoked, suspended, or cancelled license or who is otherwise ineligible for appointment or licensure, $1,000;

(5) Failing to timely submit any required appointment documents, $350;

(6) Failing to timely submit or deliver an F-5 Report of Separation, $350;

(7) Failing to timely submit racial profiling data to the commission, $1,000;

(8) Failing to timely report to the commission the reason(s) a license holder(s) appointed by the law enforcement agency or governmental entity are not in compliance with continuing education standards, $250;

(9) Failing to timely comply with substantive provisions of any order(s) issued under commission statutes or rules, $750;

(10) Failing to timely comply with technical provisions of any order(s) issued under commission statutes or rules, $350;

(11) Failing to timely comply with required audit procedures, $350;

(12) Failing to timely submit or maintain any document(s) as required by commission statutes or rules, $250;

(13) Other noncompliance with commission statutes or rules not involving fraud, deceit, misrepresentation, intentional disregard of governing law, or actual or potential harm to the public or integrity of the regulated community as a whole, $200.

(d) In determining the total penalty amount, the commission may consider the following aggravating factors:

(1) the severity and frequency of violations;

(2) multiple or previous violations;

(3) actual or potential harm to public safety;

(4) whether the violation could constitute criminal activity;

(5) evidence of an intent to defraud, deceive, or misrepresent; and

(6) any other aggravating factors existing in a particular case.

(e) In determining the total penalty amount, the commission may consider the following mitigating factors:

(1) immediacy and degree of corrective action; and

(2) any other matter that justice may require.

(f) The presence of mitigating factors does not constitute a requirement of dismissal of a violation of commission statutes or rules.

(g) Subject to final approval of the commission, the executive director has the discretion to enter into an agreed order. In return for compromise and settlement, the total penalty amount in an agreed order may be calculated using a base amount below those listed in this rule.

(h) The commission will provide written notice to a law enforcement agency or governmental entity of any alleged violations.

(i) By written answer, a law enforcement agency or governmental entity may request a hearing challenging the allegations set forth in the notice letter. Failure to file an answer within twenty days after being provided written notice may result in the entry of a default order. The default order may include additional penalties for failing to respond to the notice letter or failing to correct any alleged violations.

(j) The effective date of this section is May 2, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2013.

TRD-201301256

Kim Vickers

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: May 2, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 936-7713

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.85

The Texas Department of Transportation (department) adopts amendments to §1.85, concerning department advisory committees. The amendments to §1.85 are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 791) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted amendments create a freight advisory committee that provides advice and recommendations to the department regarding freight transportation matters and assists in identifying potential freight transportation facilities. The purpose of the amendments are to implement §1117 of Moving Ahead for Progress in the 21st Century, which directs the United States Secretary of Transportation to encourage state departments of transportation to establish freight advisory committees to facilitate effective planning for freight transportation.

New §1.85(a)(5) creates the Freight Advisory Committee.

Section 1.85(a)(5)(A) describes the purpose of the committee, which is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between public and private stakeholders on freight issues.

Section 1.85(a)(5)(B) describes the duties of the committee, which are to: 1) provide advice regarding freight-related priorities, issues, projects, and funding needs; 2) make recommendations regarding the creation of statewide freight transportation policies and performance measures; 3) make recommendations regarding the development of a comprehensive and multimodal statewide freight transportation plan; and 4) communicate and coordinate regional priorities with other organizations as requested by the department.

Section 1.85(a)(5)(C) provides for the manner of reporting and directs the committee to report its advice and recommendations to the executive director or designee, as well as to report to the commission when requested to do so.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides that the commission may establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction.

CROSS REFERENCE TO STATUTE

Moving Ahead for Progress in the 21st Century, §1117.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301293
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: April 17, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 7. RAIL FACILITIES
SUBCHAPTER D. RAIL SAFETY

43 TAC §7.31

The Texas Department of Transportation (department) adopts amendments to §7.31, concerning safety requirements. The amendments to §7.31 are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 817) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

During the department's rule review process, the Rail Division identified several changes that are necessary to update §7.31, Safety Requirements.

Amendments to §7.31 combine the laws listed in existing subsections (b) and (c) that provide safety requirements applicable to railroads operating in Texas into a single list and revise references to certain laws. Texas Civil Statutes, Article 6492a has been revised as Transportation Code, Chapter 193 and the amendments to §7.31(b)(4) reflect that change. The references to 49 C.F.R. Part 40 and 49 C.F.R. Parts 107 and 171 - 180 are moved from existing subsection (c)(1) and (2) to new subsection (b)(5) and (6), respectively. The references to the specific provisions of the Code of Federal Regulations contained in existing subsection (c)(3) - (24) are changed to a more general reference and transferred to subsection (b)(7). Existing subsection (c) is deleted as a result of the combination of the two subsections.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 111 and 193.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2013.

TRD-201301294
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: April 17, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In the February 15, 2013, issue of the *Texas Register* (38 TexReg 1003), the Texas Board of Nursing filed a Notice of Intent to review and consider for readoption, revision, or repeal the following chapters contained in Title 22, Part 11 of the Texas Administrative Code:

Chapter 214, Vocational Nursing Education, §§214.1 - 214.13.

Chapter 215, Professional Nursing Education, §§215.1 - 215.13.

Chapter 222, Advanced Practice Registered Nurses with Prescriptive Authority, §§222.1 - 222.12.

Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapters 214, 215, and 222 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapters 214, 215, and 222 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The Board readopts the rules in Chapters 214, 215, and 222 without changes, pursuant to Government Code §2001.039 and Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This concludes the rule review of Chapters 214, 215, and 222 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201301292
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: March 28, 2013

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §4.222(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

Figure: 16 TAC §4.243(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

Figure: 16 TAC §4.259(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

Figure: 19 TAC §101.3041(a)(1)

State of Texas Assessments of Academic Readiness Grades 3-8 Assessments

Phase-In and Final Recommended Level II and Level III Performance Standards

Assessment	2012, 2013 Phase-in 1 Level II	2014, 2015 Phase-in 2 Level II	2016 Recommended Level II	2012 Recommended Level III
Grade 3 English Mathematics	1392	1460	1529	1615
Grade 4 English Mathematics	1471	1535	1599	1677
Grade 5 English Mathematics	1489	1558	1627	1710
Grade 6 Mathematics	1509	1584	1658	1762
Grade 7 Mathematics	1551	1615	1678	1798
Grade 8 Mathematics	1583	1641	1700	1863
Grade 3 English Reading	1331	1400	1468	1555
Grade 4 English Reading	1422	1486	1550	1633
Grade 5 English Reading	1458	1520	1582	1667
Grade 6 Reading	1504	1567	1629	1718
Grade 7 Reading	1556	1615	1674	1753
Grade 8 Reading	1575	1637	1700	1783
Grade 4 English Writing	3500	3750	4000	4612
Grade 7 Writing	3500	3750	4000	4602
Grade 5 English Science	3500	3750	4000	4402
Grade 8 Science	3500	3750	4000	4406
Grade 8 Social Studies	3500	3750	4000	4268

Assessment	2012, 2013 Phase-in 1 Level II	2014, 2015 Phase-in 2 Level II	2016 Recommended Level II	2012 Recommended Level III
Grade 3 Spanish Mathematics	1392	1460	1529	1615
Grade 4 Spanish Mathematics	1471	1535	1599	1677
Grade 5 Spanish Mathematics	1489	1558	1627	1710
Grade 3 Spanish Reading	1304	1374	1444	1532
Grade 4 Spanish Reading	1398	1469	1539	1636
Grade 5 Spanish Reading	1447	1515	1582	1701
Grade 4 Spanish Writing	3500	3750	4000	4543
Grade 5 Spanish Science	3500	3750	4000	4402

Figure: 19 TAC §101.3041(a)(2)

State of Texas Assessments of Academic Readiness Modified Grades 3-8 Assessments

Phase-In and Final Recommended Level II and Level III Performance Standards

Assessment	2012, 2013 Phase-in 1 Level II	2014, 2015 Phase-in 2 Level II	2016 Recommended Level II	2012 Recommended Level III
Grade 3 Mathematics	2800	2900	3000	3578
Grade 4 Mathematics	2800	2900	3000	3526
Grade 5 Mathematics	2800	2900	3000	3691
Grade 6 Mathematics	2800	2900	3000	3462
Grade 7 Mathematics	2800	2900	3000	3551
Grade 8 Mathematics	2800	2900	3000	3577
Grade 3 Reading	2800	2900	3000	3306
Grade 4 Reading	2800	2900	3000	3238
Grade 5 Reading	2800	2900	3000	3312
Grade 6 Reading	2800	2900	3000	3316
Grade 7 Reading	2800	2900	3000	3368
Grade 8 Reading	2800	2900	3000	3436
Grade 4 Writing	2800	2900	3000	3349
Grade 7 Writing	2800	2900	3000	3422
Grade 5 Science	2800	2900	3000	3234
Grade 8 Science	2800	2900	3000	3509
Grade 8 Social Studies	2800	2900	3000	3348

Figure: 19 TAC §101.3041(a)(3)

State of Texas Assessments of Academic Readiness Alternate Grades 3-8 Assessments

Conversion Table

Reading, Writing, Mathematics, Science, and Social Studies

Performance Level*	2011-2012	2012-2013
Level I: Developing	0-47	0-49
Level II: Satisfactory	48-77	50-77
Level III: Accomplished	78-84	78-84

* The performance levels apply to all Alternate assessments. Each assessment has a total of 84 points possible derived in the following manner: each of the four essence statements has a maximum score of 21 points: 4 * 21 = 84.

Figure: 19 TAC §101.3041(b)(1)

State of Texas Assessments of Academic Readiness End-of-Course Assessments

Phase-In and Final Recommended Level II and Level III Performance Standards*

Assessment	2012, 2013 Phase-in 1 Level II	2014, 2015 Phase-in 2 Level II	2016 Recommended Level II	2012, 2013 Phase-in Level III	2014 Recommended Level III
English I Reading	1875	1950	2000	N/A	2304
English II Reading	1875	1950	2000	N/A	2328
English III Reading	1875	1950	2000	2135	2356
English I Writing	1875	1950	2000	N/A	2476
English II Writing	1875	1950	2000	N/A	2408
English III Writing	1875	1950	2000	2155	2300
Algebra I	3500	3750	4000	N/A	4333
Algebra II	3500	3750	4000	4080	4411
Geometry	3500	3750	4000	N/A	4397
Biology	3500	3750	4000	N/A	4576
Chemistry	3500	3750	4000	N/A	4607
Physics	3500	3750	4000	N/A	4499
World Geography	3500	3750	4000	N/A	4404
World History	3500	3750	4000	N/A	4634
U.S. History	3500	3750	4000	N/A	4440

* The standard in place when a student first takes an EOC assessment in a particular content area is the standard that will be maintained in that content area throughout the student's high school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

Figure: 19 TAC §101.3041(b)(2)

State of Texas Assessments of Academic Readiness Modified End-of-Course Assessments

Phase-In and Final Recommended Level II and Level III Performance Standards*

Assessment	2012, 2013 Phase-in 1 Level II	2014, 2015 Phase-in 2 Level II	2016 Recommended Level II	2012 Recommended Level III
English I Reading	1430	1450	1500	1672
English II Reading	1430	1450	1500	1652
English I Writing	1430	1450	1500	1612
English II Writing	1430	1450	1500	1604
Algebra I	2800	2900	3000	3470
Geometry	2800	2900	3000	3743
Biology	2800	2900	3000	3500
World Geography	2800	2900	3000	3354

* The standard in place when a student first takes an EOC assessment in a particular content area is the standard that will be maintained in that content area throughout the student's high school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

Figure: 19 TAC §101.3041(b)(3)

State of Texas Assessments of Academic Readiness Alternate End-of-Course Assessments

Conversion Table

English Language Arts, Mathematics, Science, and Social Studies

Performance Level*	2011-2012	2012-2013
Level I: Developing	0-47	0-49
Level II: Satisfactory	48-77	50-77
Level III: Accomplished	78-84	78-84

* The performance levels apply to all Alternate assessments. Each assessment has a total of 84 points possible derived in the following manner: each of the four essence statements has a maximum score of 21 points: 4 * 21 = 84.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications for the Other Victim Assistance Grant (OVAG) Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting local and statewide applications for projects that provide victim-related services or assistance. The purpose of the OAG OVAG program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

Applicable Funding Source for OVAG: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, non-profit agencies with 26 U.S.C. §501(c)(3) status; and state agencies are eligible to apply.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the Request for Applications (RFA) and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at http://www.oag.state.tx.us/victims/grants.shtml. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: http://www.oag.state.tx.us/victims/grants.shtml.

Application Deadline: The applicant must submit its application, including all required attachments to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a local program is $42,000 per fiscal year. The maximum amount for a statewide program is $200,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2013 through August 31, 2015, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Limited Volunteer Requirements: All non-governmental OVAG Applicants must have a volunteer component.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane Ferguson at Grants@texasattorneygeneral.gov or (512) 936-1278.

TRD-201301334
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 2, 2013

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Request for Applications for the Sexual Assault Prevention and Crisis Services Grant (SAPCS) - State Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. §501(c)(3) status; and state agencies are eligible to apply for a SAPCS-State grant. Funding eligibility may be further limited as stated in the Application Kit.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the Request for Applications (RFA) and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at http://www.oag.state.tx.us/victims/grants.shtml. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: http://www.oag.state.tx.us/victims/grants.shtml.

Application Deadline: The applicant must submit its application, including all required attachments to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amounts of funding are as follows: new local and new statewide programs - $30,000 per fiscal year; currently funded local programs - $200,000 per fiscal year; and currently funded statewide programs - $300,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in fiscal year (FY) 2013. The award amount is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

A currently funded program is one that has an active grant contract for FY 2013. Previous grantees that were not funded in FY 2013, or that de-obligated their contracts in FY 2013, will be considered new applicants for this Application Kit.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2013 through August 31, 2015, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Volunteer Requirements: All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane Ferguson at Grants@texasattorneygeneral.gov or (512) 936-1278.

TRD-201301332
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 2, 2013

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Request for Applications for the Victim Coordinator and Liaison Grant (VCLG) Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications for projects that provide victim-related services or assistance. The purpose of the OAG VCLG program is to fund the victim assistance coordinator and crime victim liaison positions for the purposes set forth in the Texas Code of Criminal Procedure, Article 56.04.

Applicable Funding Source for VCLG: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund a victim assistance coordinator (VAC) position. A local law enforcement agency, defined as the police department of a municipality or the sheriff's department of any county, may apply for a grant to fund a crime victim liaison (CVL) position.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the Request for Applications (RFA) and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at http://www.oag.state.tx.us/victims/grants.shtml. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: http://www.oag.state.tx.us/victims/grants.shtml.

Application Deadline: The applicant must submit its application, including all required attachments to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a local program is $42,000 per fiscal year. The maximum amount for a statewide program is $200,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2013 through August 31, 2015, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane Ferguson at Grants@texasattorneygeneral.gov or (512) 936-1278.

TRD-201301333

Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 2, 2013

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - February 2013

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period February 2013 is $68.72 per barrel for the three-month period beginning on November 1, 2012, and ending January 31, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2013, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period February 2013 is $2.82 per mcf for the three-month period beginning on November 1, 2012, and ending January 31, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2013, from a qualified Low-Producing Well, is eligible for 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2013 is $95.32 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of February 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of February 2013 is $3.31 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2013 from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201301335
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: April 3, 2013

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Notice of Request for Qualifications

Pursuant to Subchapter A, Chapter 111, §111.0045, Texas Tax Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Qualifications No. 206d ("RFQ") from qualified independent persons or firms to perform tax compliance examination services that meet the requirements of §111.0045, Texas Tax Code, administrative rules as codified at 34 Texas Administrative Code §3.3 and procedures established by Comptroller under that statute, and other applicable law. For clarification, such services do not include any at-

testation services or rendition of an opinion of any nature by any such contractors. Under this RFQ, Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. The successful respondent will be expected to begin performance of the contract on or after September 1, 2013.

Contact: The RFQ will be available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, April 12, 2013, after 10:00 a.m., CT. Parties interested in a hard copy of the RFQ should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Tuesday, April 30, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, May 10, 2013, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFQ.

Closing Date: Statement of Qualifications must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, May 24, 2013. Statement of Qualifications received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Statement of Qualifications in the Issuing Office.

Evaluation Criteria: The Statement of Qualifications will be evaluated under the evaluation criteria outlined in the RFQ. Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFQ.

The anticipated schedule of events is as follows: Issuance of RFQ - April 12, 2013, after 10:00 a.m. CT; Questions Due - April 30, 2013, 2:00 p.m. CT; Official Responses to Questions posted - May 10, 2013, or as soon thereafter as practical; Statement of Qualifications Due - May 24, 2013, 2:00 p.m. CT, Contract Execution - August 14, 2013, or as soon thereafter as practical; and Commencement of Work - on or after September 1, 2013. Any amendment to this solicitation will be posted on the ESBD as an RFQ Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFQ prior to submitting a Statement of Qualifications.

TRD-201301337
Robin Reilly
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 3, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/08/13 - 04/14/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/08/13 - 04/14/13 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 04/01/13 - 04/30/13 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/13 - 04/30/13 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201301312
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 1, 2013

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East Texas Council of Governments

Public Notice - Request for Proposals for Senior Nutrition Services

East Texas Council of Governments (ETCOG) Area Agency on Aging is seeking proposals from qualified individuals, organizations or agencies to prepare and deliver approximately 20,545 meals within the counties of Rains and Wood, Texas (19,180 congregate at approximately two congregate meal sites (Emory and Yantis) and 1,365 home delivered (Emory)). In order to be considered for funding, ETCOG must receive proposals no later than 5:00 p.m. CST on May 1, 2013.

Please visit www.etcog.org to download the request for proposal instructions.

TRD-201301288
David Cleveland
Executive Director
East Texas Council of Governments
Filed: March 28, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 13, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 13, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 2430 Pine Investments, Incorporated dba Cheris Food Mart; DOCKET NUMBER: 2012-2167-PST-E; IDENTIFIER: RN105839385; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: A P G & Z, INCORPORATED dba McKinney Food Store; DOCKET NUMBER: 2012-2566-PST-E; IDENTIFIER: RN102049228; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: AA & MM INTERNATIONAL, INCORPORATED dba Amburn Food Mart; DOCKET NUMBER: 2013-0203-PST-E; IDENTIFIER: RN102043940; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $2,152; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: AADARSH BUSINESS, INCORPORATED dba Red Rock Grocery; DOCKET NUMBER: 2012-2561-PST-E; IDENTIFIER: RN101496602; LOCATION: Red Rock, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,130; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: ANG NEEMA & ANG MARIA, INCORPORATED dba Quick Track 11; DOCKET NUMBER: 2012-2637-PST-E; IDENTIFIER: RN101796498; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: CAR SPA, INCORPORATED dba Car Spa 022; DOCKET NUMBER: 2012-2130-PST-E; IDENTIFIER: RN101435535; LOCATION: Webster, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $10,100; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Gatesville; DOCKET NUMBER: 2012-2717-PST-E; IDENTIFIER: RN101664274; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: airport with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Cosby Management, Incorporated dba Cosby Management 2026 and Cosby Management 2028; DOCKET NUMBER: 2012-2678-PST-E; IDENTIFIER: RN102256187 (Facility 1) and RN102230927 (Facility 2); LOCATION: Fort Worth and Arlington, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility 1 and Facility 2; PENALTY: $7,313; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Cox, Tim J.; DOCKET NUMBER: 2013-0512-WOC-E; IDENTIFIER: RN106573637; LOCATION: Houston, Harris County; TYPE OF FACILITY: municipal waste operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: FAIRBANK FOOD STORE, INCORPORATED dba Bestco Food Mart; DOCKET NUMBER: 2012-2627-PST-E; IDENTIFIER: RN101893782; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $9,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Hamilton Pool H2O LLC; DOCKET NUMBER: 2012-2576-PWS-E; IDENTIFIER: RN105374706; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide results of annual nitrate/nitrite sampling to the executive director for the 2011 reporting period; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result and by failing to provide public notification regarding the failure to conduct routine sampling; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide public notification regarding the failure to conduct repeat sampling; and 30 TAC §290.122(c)(2)(B), by failing to provide public notification for failure to collect routine monitoring samples for the months of February and June 2011; PENALTY: $721; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: Joe Clifton dba Brahma Mart; DOCKET NUMBER: 2012-2422-PST-E; IDENTIFIER: RN101873503; LOCATION: Omaha, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $11,383; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: JOHNSON-WHITE & ASSOCIATES, INCORPORATED dba White's Exxon; DOCKET NUMBER: 2012-2605-PST-E; IDENTIFIER: RN103758884; LOCATION: Waskom, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,881; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: KBR INVESTMENT, INCORPORATED dba Super Stop 22; DOCKET NUMBER: 2012-2660-PST-E; IDENTIFIER: RN102361938; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,750; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: M L S S, INCORPORATED dba Sunny Food Mart; DOCKET NUMBER: 2012-2669-PST-E; IDENTIFIER: RN101330751; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,881; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: Mahendrabhai B. Patel dba Superette Food Mart; DOCKET NUMBER: 2013-0443-PST-E; IDENTIFIER: RN102043874; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: MCLANE COMPANY, INCORPORATED; DOCKET NUMBER: 2012-2213-PST-E; IDENTIFIER: RN101616779 (Facility 1) and RN101435717 (Facility 2); LOCATION: Temple, Bell County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility 1 and Facility 2; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system at Facility 1; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel at Facility 1; PENALTY: $13,259; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: MORGAN OIL COMPANY dba Depot Chevron; DOCKET NUMBER: 2012-1932-PST-E; IDENTIFIER: RN101753267; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: TWC, §26.121, by failing to prevent an unauthorized discharge into or adjacent to any water in the state; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Rite Enterprises, Incorporated dba Delco Country Store; DOCKET NUMBER: 2012-2544-PST-E; IDENTIFIER: RN102238888; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: S.M. QUICK SHOP, INCORPORATED; DOCKET NUMBER: 2012-2531-PST-E; IDENTIFIER: RN102049434; LOCATION: Winnsboro, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $8,504; ENFORCEMENT

COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: SAHIL MERCHANT, INCORPORATED dba T Mart; DOCKET NUMBER: 2012-2277-PST-E; IDENTIFIER: RN102217916; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(4) - (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for inspection upon request by agency personnel; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $2,927; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: SARVODAY ENTERPRISES LLC dba Times Market; DOCKET NUMBER: 2013-0078-PST-E; IDENTIFIER: RN101811081; LOCATION: Windcrest, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,881; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: TA Operating LLC dba Petro Stopping Center 307; DOCKET NUMBER: 2012-2269-PST-E; IDENTIFIER: RN102438181; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Toepperwein Food Mart, Incorporated dba First Stop; DOCKET NUMBER: 2012-2590-PST-E; IDENTIFIER: RN102790383; LOCATION: Converse, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,618; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201301313

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2013

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Notice of Correction to Agreed Order Number 11

In the January 18, 2013, issue of the *Texas Register* (38 TexReg 310), the Texas Commission on Environmental Quality (commission) published a notice of Agreed Orders. Agreed Order Number 11, concerning Exxon Mobil Corporation, which appeared on page 312, has been revised. The reference to the Supplemental Environmental Project being City of Baytown - Hospital Remediation Project at Goose Creek should instead be Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201301314
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2013

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 13, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 13, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ASMA C-STORES, INC. d/b/a Huntsville Exxon; DOCKET NUMBER: 2012-1374-PST-E; TCEQ ID NUMBER: RN102400769; LOCATION: 558 Interstate 45 South, Huntsville,

Walker County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,110; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Brandon Menn d/b/a B & C Tire Disposal, and Celina Menn; DOCKET NUMBER: 2012-0623-MLM-E; TCEQ ID NUMBER: RN105871875; LOCATION: 6237 Highway 77, Odem, San Patricio County; TYPE OF FACILITY: tire transporter and processing facility; RULES VIOLATED: 30 TAC §328.54(d), by failing to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides of the rear of the vehicle with the name and place of business of the transporter and the commission registration number; 30 TAC §§328.55, 328.60(a) and 328.63(c), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground (or weight equivalent tire pieces or any combination thereof); 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §328.23(a), by failing to prevent the storage, processing, or disposal of used oil filters in a manner that results in the discharge of oil into soil or water; and 40 Code of Federal Regulations §279.22(d) and 30 TAC §324.6, by failing to perform cleanup action upon detection of a release of used oil; PENALTY: $12,075; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2012-1441-AIR-E; TCEQ ID NUMBER: RN100209857; LOCATION: 2001 Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §§111.111(a)(4)(A), 116.115(b)(2)(F) and (c), and 122.143(4), and Federal Operating Permit Number O1235, General Terms and Conditions and Special Terms and Conditions Numbers 1 and 22, and New Source Review Permit Numbers 21101 and PSTDTX1248, Special Conditions Numbers 8 and 14, by failing to prevent unauthorized emissions; PENALTY: $100,000; Supplemental Environmental Project offset amount of $25,000 applied to Meteorological and Air Monitoring Network, Jefferson County, and Supplemental Environmental Project offset amount of $25,000 applied to West Port Arthur Home Energy Efficiency Program, Jefferson County; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: DNR BUSINESS, INC.; DOCKET NUMBER: 2012-1095-PST-E; TCEQ ID NUMBER: RN102712528; LOCATION: 1216 South Front Street, Bellville, Austin County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(a) and (c)(1), and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; PENALTY: $7,631; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: DRJO ENTERPRISE INC. d/b/a Crystal Car Wash; DOCKET NUMBER: 2012-0892-PST-E; TCEQ ID NUMBER: RN101540466; LOCATION: 646 East Centerville Road, Garland, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and car wash; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,633; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Hamid Rezaie and Saeed Mahboubi d/b/a Flash Mart Stores, Inc., Walnut Hill 1-35 Enterprises, LLC, and Park Abrams Enterprises LLC d/b/a Park Abrams Flash Mart; DOCKET NUMBER: 2011-1935-PST-E; TCEQ ID NUMBER: RN102713377; LOCATION: 2410 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $4,379; STAFF ATTORNEY: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800; REGIONAL OFFICE: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675.

(7) COMPANY: J & K Group, Incorporated d/b/a USA RV Park 2; DOCKET NUMBER: 2012-1026-UTL-E (the docket extension for this case was originally MLM); TCEQ ID NUMBER: RN101227296; LOCATION: 14111 Hughes Road, Guy, Fort Bend County; TYPE OF FACILITY: retail public utility, and provides potable water service or sewer service, or both, for compensation; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §291.162(a) and (j), by failing to submit to the executive director for approval by February 1, 2012, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $1,935; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Johnny L. Hernandez; DOCKET NUMBER: 2012-1854-LII-E; TCEQ ID NUMBER: RN103494829; LOCATION: 2015 Perennial Drive, San Antonio, Bexar County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: Texas Occupational Code, §1903.251 and TWC, §37.003 and 30 TAC §30.5(a), by failing to obtain an irrigator license prior to performing irrigation service; and TWC, §37.003 and 30 TAC §30.5(b)(1), by failing to refrain from advertising irrigation services or representing himself to the public as a holder of an irrigation license unless possessing a current irrigator license; PENALTY: $1,186; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Karcher Oil Co. Limited Liability Company; DOCKET NUMBER: 2012-2184-PST-E; TCEQ ID NUMBER: RN102958782; LOCATION: 12404 United States Highway 70 South,

Vernon, Wilbarger County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,256; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: KHODLE, INC.; DOCKET NUMBER: 2012-0563-PST-E; TCEQ ID NUMBER: RN102348919; LOCATION: 7425 Mainland Drive, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: MIKE'S CONVENIENCE STORE, INC.; DOCKET NUMBER: 2012-2238-PST-E; TCEQ ID NUMBER: RN101666253; LOCATION: 1003 West 4th Street, Cameron, Milam County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,884; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: NSRS ENTERPRISE, INC. d/b/a DON'S FOOD MART; DOCKET NUMBER: 2012-0755-PST-E; TCEQ ID NUMBER: RN101432755; LOCATION: 2020 East Rusk Street, Jacksonville, Cherokee County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $4,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: COMPANY: Park Abrams Enterprises LLC d/b/a Flash Mart Abrams; DOCKET NUMBER: 2011-2171-PST-E; TCEQ ID NUMBER: RN103136362; LOCATION: 6769 Abrams Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,169; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: PROTON REALTY CO. d/b/a C Store 104; DOCKET NUMBER: 2012-1889-PST-E; TCEQ ID NUMBER: RN102028792; LOCATION: 16601 Addison Road, Addison, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.346(a) and 30 TAC §334.8(c)(4)(A)(vii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring; PENALTY: $6,840; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Harold Ridlehuber d/b/a J & R Auto; DOCKET NUMBER: 2012-0555-IHW-E; TCEQ ID NUMBER: RN100546324; LOCATION: 610 Abbot Avenue, Hillsboro, Hill County; TYPE OF FACILITY: metal parts coating and an automotive oil change facility; RULES VIOLATED: 30 TAC §335.4 and TCEQ AO Docket Number 2009-1022-MLM-E, Ordering Provision Number 2.a.i., by failing to properly remove and dispose of industrial solid waste at an authorized facility; PENALTY: $12,150; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Samuel O Klaerner d/b/a Chaparral Water System; DOCKET NUMBER: 2012-1133-PWS-E; TCEQ ID NUMBER: RN101227270; LOCATION: 290 Robin Lane, nine miles southeast of Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR), to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR), to the executive director each quarter by the tenth day of the month following the end of the quarter for the second quarter of 2011; 30 TAC §290.109(c)(3)(A)(ii)

and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and failed to provide public notice to persons served by the facility regarding the failure to collect repeat distribution coliform samples for the month of October 2011; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's two wells within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notice to persons served by the facility regarding the failure to collect the required raw groundwater source *Escherichia coli* samples for the month of October 2011; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive result and failing to provide public notice of the failure to conduct increased monitoring for the month of November 2011; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notice of the failure to sample for the month of January 2012; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter for the third and fourth quarters of 2011; PENALTY: $2,068; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Sky Business, Inc. d/b/a Bryan Drive In; DOCKET NUMBER: 2011-1925-PST-E; TCEQ ID NUMBER: RN102274537; LOCATION: 1501 Groesbeck Street, Bryan, Brazos County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,510; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Tyson & Co. Inc.; DOCKET NUMBER: 2012-1844-PST-E; TCEQ ID NUMBER: RN102434669; LOCATION: 3520 Asset Street, Garland, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and fleet refueling facility; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,522; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Yoon Soo Song d/b/a Beltway Grill Shell; DOCKET NUMBER: 2012-2689-PST-E; TCEQ ID NUMBER: RN101434512; LOCATION: 12725 South Gessner Road, Missouri City, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $9,800; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201301329
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2013

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 13, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 13, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Abel Becerra, Jr.; DOCKET NUMBER: 2012-2062-MSW-E; TCEQ ID NUMBER: RN106514995; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $30,000; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Ampelio Vargas d/b/a Los Dos Patrones Taqueria and Abelina Vargas d/b/a Los Dos Patrones Taqueria; DOCKET NUMBER: 2012-2048-PWS-E; TCEQ ID NUMBER: RN101247302; LOCATION: 2272 Highway 36 North, Sealy, Austin County; TYPE OF FACILITY: public water system; RULES VIOLATED:

Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the month of July 2011, and failing to provide public notice of the failure to sample; 30 TAC §290.122(c)(2)(B), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the month of October 2010; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the 2010 reporting period; THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of September 2011, November 2011 - January 2012, March 2012, and April 2012, and by failing to provide public notice of the failures to sample; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the 2011 reporting period; 30 TAC §290.106(e), by failing to provide the results of triennial minerals monitoring to the executive director for the monitoring period from January 1, 2009 - December 31, 2011, reporting period; 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 90080050 for fiscal year 2012; PENALTY: $3,004; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: M & M WEST DAVIS INC d/b/a Diamond Mart; DOCKET NUMBER: 2012-1910-PST-E; TCEQ ID NUMBER: RN102425386; LOCATION: 812 West Davis Street, Conroe, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $10,632; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Penny Cable d/b/a Hilltop Tire Service; DOCKET NUMBER: 2011-1053-MSW-E; TCEQ ID NUMBER: RN101896538; LOCATION: 618 West Wise Street, Bowie, Montague County; TYPE OF FACILITY: new and used tire service facility; RULES VIOLATED: 30 TAC §328.56(b) and §330.15(c), by failing to use a registered transporter to transport scrap tires, and by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §328.56(c), by failing to use manifests to document the removal and management of all scrap tires generated at the facility; PENALTY: $7,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201301327
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2013

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 13, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 13, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: MOCKINGBIRD SKILLMAN MOBIL, INC. d/b/a Mockingbird Mobil; DOCKET NUMBER: 2012-1874-PST-E; TCEQ ID NUMBER: RN102765773; LOCATION: 6101 East Mockingbird Lane, Dallas, Dallas County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $12,610; STAFF ATTORNEY: Becky Combs, Litigation

Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301328
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2013

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Notice of Water Quality Applications

The following notices were issued on March 22, 2013, through March 29, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

SHELDON ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010541001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 230,000 gallons per day. The facility is located at 9403 Sheldon Road, approximately 1.25 miles south-southwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County, Texas 77049.

CITY OF MONTGOMERY has applied for a renewal of TPDES Permit No. WQ0011521001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The facility is located at 14751 North Liberty Street, Montgomery, north of the City of Montgomery, approximately 4,000 feet north of the intersection of Farm-to-Market Road 149 and State Highway 105, west of the point where Farm-to-Market Road 149 crosses Town Creek in Montgomery County, Texas 77536.

HARRIS COUNTY UTILITY DISTRICT NO 16 has applied for a renewal of TPDES Permit No. WQ0012614001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located 2,000 feet north of Hardy Road on Fernbush Drive in the American Plaza Subdivision and approximately one mile north of the intersection of Hardy Road and Farrell Road in Harris County, Texas 77073.

JAMES WAYNE ROBINSON has applied for a renewal of TPDES Permit No. WQ0012830001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately 100 feet south of the end of Northwinds Drive, approximately 1,700 feet south of the intersection of Northwinds Drive and Farm-to-Market Road 529 in Harris County, Texas 77041.

BAHRAM SOLHJOU has applied for a renewal of TPDES Permit No. WQ0012882001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 825 Gulf Bank Road, 0.5 mile northwest of the intersection of Gulf Bank Road and Hardy Toll Road in Harris County, Texas 77037.

PEASTER INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013589001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The facility is located at 3602 Harwell Lake Road, Weatherford in Parker County, Texas 76088.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 89 has applied for a renewal of TPDES Permit No. WQ0013985001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 29722 1/2 Legends Ridge Drive #2, in Spring, approximately 5,200 feet north of the intersection of Riley Fuzzell Road and Rayford Road in Montgomery County, Texas 77386.

WHARTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0014019001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 106 Fitzgerald Street, East Bernard, approximately one mile east of the intersection of U.S. Highway 90A and State Highway 60, 200 feet west of a braided portion of the San Bernard River in Wharton County, Texas 77435.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 9 has applied for a major amendment to TPDES Permit No. WQ0014030001 to remove effluent limitations and monitoring requirements for trichloroethylene. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day in the Interim and Final phases. The facility is located at 11023 Regency Green Drive, approximately 1/4 mile west of Jones Road and 1/3 mile south of Grant Road in Harris County, Texas 77429.

HARRIS COUNTY IMPROVEMENT DISTRICT NO 18 has applied for a new permit, proposed TPDES Permit No. WQ0014964001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,185,000 gallons per day. The facility will be located on the west side of Interstate Highway 45 North, approximately 3,950 feet north of the intersection of Interstate Highway 45 North and Spring Stuebner Road in Harris County, Texas 77389.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301336
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 3, 2013

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Red Oak Hospital, L.L.C.	L06536	Houston	00	02/28/13
Houston	Westside Surgical Hospital, L.L.C.	L06538	Houston	00	03/13/13
Texarkana	Texarkana Regional Healthcare Network dba Cardiology Specialists	L06537	Texarkana	00	03/06/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	23	03/15/13
Angleton	Advanced Corrosion Technologies and Training, L.L.C. dba ACCT - Advanced Corrosion Technologies and Training, L.L.C.	L06508	Angleton	01	03/05/13
Arlington	USMD Hospital at Arlington	L05727	Arlington	14	03/07/13
Austin	Austin Nuclear Pharmacy, Inc.	L05591	Austin	16	03/11/13
Baytown	Sarma Challa, M.D., P.A.	L05040	Baytown	17	03/08/13
Channelview	Lyondell Chemical Company	L04439	Channelview	29	03/13/13
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	96	03/11/13
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	119	03/11/13
Corpus Christi	Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	34	03/11/13
Corpus Christi	Triad Isotopes, Inc. dba Triad Isotopes-Corpus Christi	L05368	Corpus Christi	18	03/13/13
Crockett	East Texas Medical Center Crockett	L01411	Crockett	34	03/08/13
Cypress	Cypress Cardiology, P.A.	L04353	Cypress	26	03/11/13
Dallas	Baylor College of Dentistry	L00323	Dallas	42	03/13/13
Dallas	Baylor University Medical Center	L01290	Dallas	110	03/08/13
Dallas	Triad Isotopes, Inc.	L06334	Dallas	05	03/12/13
DFW Airport	Composite Technology, Inc.	L06418	DFW Airport	01	03/12/13
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	108	03/13/13
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	75	03/14/13
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	77	03/07/13
Fort Worth	NDE Labs, Inc.	L02355	Fort Worth	28	02/22/13
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	30	03/05/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	180	03/12/13
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L00650	Houston	89	03/12/13
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	137	03/12/13
Houston	SJ Medical Center, L.L.C. dba St. Joseph's Medical Center	L02279	Houston	78	03/14/13
Houston	Leachman Cardiology Associates, P.A.	L05229	Houston	12	03/04/13
Houston	Gulf Coast MRI & Diagnostic	L05333	Houston	19	02/27/13
Houston	MH/USON Radiation Management Company, L.L.C.	L06408	Houston	09	03/11/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	IRISNDT Matrix Corporation	L06435	Houston	04	03/05/13
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	04	03/04/13
Houston	Nisotopes, L.L.C.	L06535	Houston	02	03/11/13
Humble	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Humble	90	03/13/13
Katy	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Katy	64	03/13/13
Kingwood	Millennium Physicians Association, P.L.L.C. dba Millennium PET/CT Center	L05901	Kingwood	07	03/06/13
Lakeway	Lakeway Regional Medical Center, L.L.C.	L06461	Lakeway	03	03/08/13
McAllen	Valley Cardiology, P.A.	L04692	McAllen	24	03/15/13
Mesquite	Southwest Cardiac Associates	L05589	Mesquite	09	03/01/13
Mount Pleasant	Cardiology Consultants of East Texas, P.A.	L06274	Mount Pleasant	03	03/06/13
Paris	Physician Reliance Network, Inc. dba Paris Regional Cancer Center	L04664	Paris	26	03/11/13
Pasadena	University Cancer Ctr. Huntsville Brenham Inc.	L06070	Pasadena	05	03/13/13
Pasadena	Air Products, L.L.C.	L06517	Pasadena	01	03/11/13
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	65	03/12/13
San Angelo	Shannon Clinic	L04216	San Angelo	50	03/11/13
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	222	03/08/13
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	314	03/08/13
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	315	03/13/13
San Marcos	Texas State University San Marcos	L03321	San Marcos	34	03/12/13
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	45	03/13/13
Sugar Land	Memorial Hermann Health System dba Memorial Hermann Sugar land Hospital	L03457	Sugar Land	39	03/01/13
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	36	03/12/13
Taylor	Alliance Geotechnical Group of Austin, Inc.	L06147	Taylor	03	03/01/13
The Woodlands	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	102	03/01/13
Throughout TX	ECS - Texas, L.L.P.	L05384	Addison	08	03/08/13
Throughout TX	Team Industrial Services, Inc.	L00087	Alvin	227	03/12/13
Throughout TX	Advanced Corrosion Technologies and Training, L.L.C. dba ACCT - Advanced Corrosion Technologies and Training, L.L.C.	L06508	Angleton	02	03/06/13
Throughout TX	Weatherford International, Inc.	L04286	Benbrook	93	02/27/13
Throughout TX	Weatherford International, Inc.	L04286	Benbrook	94	03/06/13
Throughout TX	Nondestructive & Visual Inspection, L.L.C.	L06162	Carthage	09	03/14/13
Throughout TX	Savage-Tolk Corporation	L02672	Earth	25	02/27/13
Throughout TX	AMEC Environment & Infrastructure, Inc.	L03622	El Paso	28	03/11/13
Throughout TX	Gray Wireline Service, Inc.	L03541	Fort Worth	45	03/12/13
Throughout TX	Superior Production Logging, Inc. dba SPL Wireline Services	L01983	Granbury	43	03/05/13
Throughout TX	Fugro Consultants, Inc.	L00058	Houston	58	03/04/13
Throughout TX	Professional Service Industries, Inc.	L00203	Houston	133	03/04/13
Throughout TX	HVJ Associates, Inc.	L03813	Houston	49	03/07/13
Throughout TX	Paradigm Consultants, Inc.	L04875	Houston	10	03/14/13
Throughout TX	All-Terra Engineering, Inc.	L06215	Houston	02	03/15/13
Throughout TX	Incipit Medical Physics, Inc. dba Medical Physics Consultants	L06522	Irving	02	03/11/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Marco Inspection Services, L.L.C.	L06072	Kilgore	45	03/11/13
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	274	03/06/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Levelland	13	03/07/13
Throughout TX	Capitan Corporation	L05824	Midland	08	03/07/13
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists, L.L.C.	L05972	Palestine	94	02/28/13
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists, L.L.C.	L05972	Palestine	95	03/12/13
Throughout TX	Intec	L05150	San Antonio	18	03/07/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	182	03/12/13
Weatherford	Medical and Heart Center, P.A.	L05573	Weatherford	05	03/08/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Baker Hughes Oilfield Operations, Inc.	L04452	Houston	52	03/08/13
Throughout TX	GK Techstar, L.L.C. dba Techstar	L05562	Deer Park	10	03/08/13
Throughout TX	HTS, Inc. Consultants	L02757	Houston	22	03/11/13
Throughout TX	Nuclear Sources & Services, Inc. dba NSSI/Sources & Services, Inc. NSSI	L02991	Houston	39	03/07/13
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	99	03/06/13
Throughout TX	Duininck, Inc.	L03957	Roanoke	21	03/04/13
Tomball	Cardiovascular Institute, P.A.	L05740	Tomball	05	03/12/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Capital Cardiovascular Consultants	L05590	Austin	20	03/08/13
Dallas	Applied Technical Services, Inc.	L06282	Dallas	06	03/04/13
Houston	Okomed Downtown Imaging	L05966	Houston	03	03/06/13
Spring	2920 Open MRI & Digital Imaging, L.L.C.	L06460	Spring	03	02/28/13
Texarkana	Advanced Cardiology of Texarkana	L05976	Texarkana	07	03/06/13
Throughout TX	Durwood Greene Construction, L.P.	L04753	Stafford	10	03/13/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201301338
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 3, 2013

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Texas Department of Housing and Community Affairs

Request for Proposals for Real Estate Broker Services

SUMMARY. Real Estate Broker services are needed for income and rent restricted multifamily rental properties located throughout Texas for purpose of acquisition, disposition, and preservation of real property as requested by the Texas Department of Housing and Community Affairs (Department).

POSTING DATE AND DEADLINE FOR SUBMISSION. The Request for Proposals (RFP) was posted on THURSDAY, MARCH 21, 2013. The deadline for submission in response to the RFP is 2:00 p.m., Central Daylight Saving Time, THURSDAY, APRIL 18, 2013. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion that it is in the best interest of the Department to do so.

Individuals or firms interested in submitting a proposal should visit our website at: http://www.tdhca.state.tx.us/ under the "What's New" section or visit http://esbd.cpa.state.tx.us/, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck (julie.dumbeck@tdhca.state.tx.us).

PLACE AND METHOD OF QUALIFICATION DELIVERY. Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Julie Dumbeck

Mailing Address:

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201301296
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 28, 2013

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by GREAT PLAINS CASUALTY, INC., a foreign Fire and/or Casualty company. The home office is in Cedar Rapids, Iowa.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301340
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 3, 2013

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Texas Department of Licensing and Regulation

Vacancy on Elevator Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Elevator Advisory Board (Board) established by Texas Health and Safety Code, Chapter 754. The pertinent rules may be found in 16 TAC §74.65. The purpose of the Board is to advise the Texas Commission of Licensing and Regulation (Commission) on the adoption of appropriate standards for the installation, alteration, operation and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announcement is for the following position: a representative of the insurance industry or a certified elevator inspector.

Interested persons should submit an application on the Department website at: https://www.license.state.tx.us/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail advisory.boards@tdlr.texas.gov. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201301341
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 3, 2013

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Texas Lottery Commission

Instant Game Number 1509 "Lucky Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1509 is "LUCKY NUMBERS". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1509 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1509.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols for SCENES 1-6 are: $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000, $20,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20. An additional possible black Play Symbol for SCENE 1 is "1" SYMBOL. An additional possible black Play Symbol for SCENE 2 is "2" SYMBOL. An additional possible black Play Symbol for SCENE 3 is "3" SYMBOL. An additional possible black Play Symbol for SCENE 4 is "4" SYMBOL. An additional possible black Play Symbol for SCENE 5 is "5" SYMBOL. An additional possible black Play Symbol for SCENE 6 is "6" SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1509 - 1.2D

PLAY SYMBOLS FOR SCENES 1 - 6	CAPTION
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
PLAY SYMBOL FOR SCENE 1: "1" SYMBOL	WIN
PLAY SYMBOL FOR SCENE 2: "2" SYMBOL	WIN
PLAY SYMBOL FOR SCENE 3: "3" SYMBOL	WIN
PLAY SYMBOL FOR SCENE 4: "4" SYMBOL	WIN
PLAY SYMBOL FOR SCENE 5: "5" SYMBOL	WIN
PLAY SYMBOL FOR SCENE 6: "6" SYMBOL	WIN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven

(7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1509), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1509-0000001-001.

K. Pack - A Pack of "LUCKY NUMBERS" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY NUMBERS" Instant Game No. 1509 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "LUCKY NUMBERS" Instant Game SCENES (1-6) is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. In SCENE 1, if a player reveals a "1" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. In SCENE 2, if a player reveals a "2" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. In SCENE 3, if a player reveals a "3" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. In SCENE 4, if a player reveals a "4" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. In SCENE 5, if a player reveals a "5" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. In SCENE 6, if a player reveals a "6" Play Symbol, the player wins the PRIZE for that Play Symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eleven (11) times.

D. On winning and Non-Winning Tickets, the top cash prize of $20,000 and the $1,000 prize will each appear at least once, except on Tickets winning eleven (11) times.

E. A non-winning Prize Symbol will not match a winning Prize Symbol on a Ticket.

F. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

G. All Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

H. A non-winning Play Symbol will never equal the corresponding Prize Symbol (i.e., 2 and $2).

I. On scene 1, Non-Winning Tickets will never display a "1" Play Symbol.

J. On scene 2, Non-Winning Tickets will never display a "2" Play Symbol.

K. On scene 3, Non-Winning Tickets will never display a "3" Play Symbol.

L. On scene 4, Non-Winning Tickets will never display a "4" Play Symbol.

M. On scene 5, Non-Winning Tickets will never display a "5" Play Symbol.

N. On scene 6, Non-Winning Tickets will never display a "6" Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY NUMBERS" Instant Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY NUMBERS" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY NUMBERS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCKY NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LUCKY NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name

or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 Tickets in the Instant Game No. 1509. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1509 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	848,640	9.62
$5	413,440	19.74
$6	195,840	41.67
$10	261,120	31.25
$15	21,760	375.00
$16	65,280	125.00
$20	43,520	187.50
$30	7,310	1,116.28
$50	5,100	1,600.00
$100	1,665	4,900.90
$1,000	16	510,000.00
$20,000	8	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1509 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1509, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301311
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 1, 2013

♦ ♦ ♦

Instant Game Number 1545 "$75,000 Cashword-O-Rama"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1545 is "$75,000 CASHWORD-O-RAMA". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1545 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1545.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive. The possible Black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and blackened square. The possible Red Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and

each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1545 - 1.2D

PLAY SYMBOL	CAPTION
A (BLACK)	
B (BLACK)	
C (BLACK)	
D (BLACK)	
E (BLACK)	
F (BLACK)	
G (BLACK)	
H (BLACK)	
I (BLACK)	
J (BLACK)	
K (BLACK)	
L (BLACK)	
M (BLACK)	
N (BLACK)	
O (BLACK)	
P (BLACK)	
Q (BLACK)	
R (BLACK)	
S (BLACK)	
T (BLACK)	
U (BLACK)	
V (BLACK)	
W (BLACK)	
X (BLACK)	
Y (BLACK)	
Z (BLACK)	
▓ SYMBOL (BLACK)	
A (RED)	
B (RED)	
C (RED)	
D (RED)	
E (RED)	
F (RED)	
G (RED)	
H (RED)	
I (RED)	
J (RED)	
K (RED)	
L (RED)	
M (RED)	
N (RED)	
O (RED)	
P (RED)	
Q (RED)	
R (RED)	
S (RED)	

T (RED)	
U (RED)	
V (RED)	
W (RED)	
X (RED)	
Y (RED)	
Z (RED)	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $40.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $75,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1545), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1545-0000001-001.

K. Pack - A Pack of "$75,000 CASHWORD-O-RAMA" Instant Game Tickets contain 075 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$75,000 CASHWORD-O-RAMA" Instant Game No. 1545 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "$75,000 CASHWORD-O-RAMA" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 144 (one hundred forty-four) possible Play Symbols. The player must scratch and reveal all the YOUR 19 LETTERS Play Symbols in the play area. The player must use the YOUR 19 LETTERS Play Symbols to form words in the CASHWORD-O-RAMA puzzle and BONUS WORDS A, B, C and D. The player will continue until all of the letters in the YOUR 19 LETTERS play area have been scratched in the CASHWORD-O-RAMA puzzle and all of the BONUS WORDS A, B, C and D. If a player reveals three (3) or more words in the CASHWORD-O-RAMA puzzle, the player wins the prize in the PRIZE LEGEND. If a player completely reveals a RED word, the player wins DOUBLE the prize in the PRIZE LEGEND. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the CASHWORD-O-RAMA puzzle and BONUS WORDS A, B, C and D. Only letters within the CASHWORD-O-RAMA puzzle and BONUS WORDS A, B, C and D play areas that are matched with the YOUR 19 LETTERS Play Symbols can be used to form a complete "word". Words revealed in a diagonal sequence are not considered valid "words." Words within words are not eligible for a prize. For example, the Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. There will be only one prize in each puzzle. BONUS WORDS do not add to the number of words required for the CASHWORD-O-RAMA PRIZE LEGEND. Each puzzle is played separately. If a player reveals A COMPLETED RED WORD IN THE CASHWORD-O-RAMA PUZZLE, the player wins DOUBLE the PRIZE. In the BONUS WORDS (A, B, C, D) play areas: If a player completely reveals a BLACK BONUS WORD, the player wins $10 instantly. If a player completely reveals a RED BONUS WORD, the player wins $30 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. One hundred forty-four (144) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Play Symbols in this game do not have Play Symbol Captions. Crossword and Bingo style games do not typically have Play Symbol Captions.

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have 144 (one hundred forty-four) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 144 (one hundred forty-four) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 144 (one hundred forty-four) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a Ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. No duplicate Play Symbols in the YOUR 19 LETTERS play area.

I. There will be a minimum of three (3) vowels in the YOUR 19 LETTERS. Vowels are considered to be A, E, I, O and U.

J. At least fifteen (15) letters in the YOUR 19 LETTERS will open at least one letter in the (13x13) cashword grid and BONUS WORDS A, B, C and D.

K. At least one Play Symbol in the BONUS WORDS A, B, C and D area will match to at least one letter in the YOUR 19 LETTERS.

L. Vowels will appear randomly in the YOUR 19 LETTERS area.

M. The presence or absence of any letter or combination of letters in the YOUR 19 LETTERS will not be indicative of a winning or Non-Winning Ticket.

N. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR 19 LETTERS area.

O. The completed RED words will win only as dictated by the prize structure.

P. On Non-Winning Tickets, the (13x13) cashword grid will have at least 2 completed words.

Q. There will be no non-winning grid containing a RED word completely revealed in the cashword grid.

R. On winning Tickets when the only win or wins occur in the BONUS WORDS A, B, C and/or D, and there is no win in the (13x13) cashword grid, only one completed word will be revealed in the (13x13) cashword grid.

S. The (13x13) cashword grid will only have one (1) RED word.

T. The (13x13) cashword grid will not have more than 10 words completed.

U. The BONUS WORDS (A, B, C and D) will win as indicated by the prize structure.

V. There will always be two (2) BLACK Bonus grids (A and D) and two (2) RED Bonus grids (B and C).

2.3 Procedure for Claiming Prizes.

A. To claim a "$75,000 CASHWORD-O-RAMA" Instant Game prize of $5.00, $10.00, $20.00, $30.00, $40.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $30.00, $40.00, $50.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$75,000 CASHWORD-O-RAMA" Instant Game prize of $1,000, $5,000 or $75,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation

of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$75,000 CASHWORD-O-RAMA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$75,000 CASHWORD-O-RAMA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$75,000 CASHWORD-O-RAMA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 Tickets in the Instant Game No. 1545. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1545 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,000,000	7.50
$10	1,400,000	10.71
$20	400,000	37.50
$30	183,125	81.91
$40	112,500	133.33
$50	68,750	218.18
$100	18,750	800.00
$200	4,750	3,157.89
$500	2,500	6,000.00
$1,000	250	60,000.00
$5,000	30	500,000.00
$75,000	15	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.58. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1545 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1545, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301316
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 2, 2013

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Instant Game Number 1546 "Bingo Multi-Prize"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1546 is "BINGO MULTI-PRIZE". The play style for the game BINGO is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1546 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1546.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1546 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
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63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,000, $5,000, $20,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1546), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1546-0000001-001.

K. Pack - A Pack of "BINGO MULTI-PRIZE" Instant Game Tickets contains 75 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BINGO MULTI-PRIZE" Instant Game No. 1546 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BINGO MULTI-PRIZE" Instant Game is determined once the latex on the Ticket is scratched off to expose 195 (one hundred ninety-five) Play Symbols. The player must scratch off the "CALLER'S CARD" area to reveal 24 (twenty-four) BINGO Numbers and 6 (six) BONUS NUMBERS. MULTI-PRIZE CARD: The player must scratch all numbers that match the BINGO Numbers and BONUS NUMBERS on the "CALLER'S CARD". If the player reveals all numbers in one horizontal row, the player multiplies the total prizes for CARDS 1 through 6 by the PRIZE MULTIPLIER for that row. The player must scratch all of the BINGO Numbers and BONUS NUMBERS on CARDS 1 through 6 that match the BINGO Numbers and BONUS NUMBERS on the "CALLER'S CARD". Each "CARD" has a corresponding prize legend. Players win by matching those same numbers on the six Player's CARDS. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the CARD, or an X pattern, the player wins a prize according to the legend of the respective playing CARD. Examples of play: If a player matches all bingo numbers plus the "FREE" space in a complete horizontal, vertical or diagonal line pattern in any one CARD, the player wins prize according to the legend of the respective playing CARD. If the player matches all bingo numbers in all four (4) corners pattern in any one CARD, the player wins prize according to the legend of the respective playing CARD. If the player matches all bingo numbers plus "FREE" space to make a complete "X" pattern in any one CARD, the player wins prize according to the legend of the respective playing CARD. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 195 (one hundred ninety-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol captions.

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 195 (one hundred ninety-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 195 (one hundred ninety-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 195 (one hundred ninety-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to six times.

D. BINGO CARDS: There will never be more than one win on a single BINGO CARD.

E. BINGO CARDS: The highest prize won per card will be paid.

F. BINGO CARDS: No duplicate numbers will appear on the CALLER'S CARD.

G. BINGO CARDS: No duplicate numbers will appear on each individual BINGO CARD.

H. BINGO CARDS: The number range used for each letter (B, I, N, G, O) will be as follows: B (01-15), I (16-30), N (31-45), G (46-60), O (61-75).

I. BINGO CARDS: Each BINGO CARD on the same Ticket must be different.

J. BINGO CARDS: The 24 CALLER'S CARD numbers and 6 BONUS NUMBERS will match 53 to 83 numbers per Ticket.

K. BINGO CARDS: The majority of the Tickets will have different configurations.

L. MULTI-PRIZE CARD: All numbers within the MULTI-PRIZE CARD will be different.

M. MULTI-PRIZE CARD: Only one completed combination per MULTI-PRIZE CARD per Ticket (i.e., on any Ticket, if the "5X PRIZE" row is completed, the "2X PRIZE" and "10X PRIZE" rows will not be completed).

N. MULTI-PRIZE CARD: Non-Winning Tickets will not have a completed combination in any MULTI-PRIZE CARD.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO MULTI-PRIZE" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BINGO MULTI-PRIZE" Instant Game prize of $1,000, $2,000, $5,000, $20,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO MULTI-PRIZE" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BINGO MULTI-PRIZE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BINGO MULTI-PRIZE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 Tickets in the Instant Game No. 1546. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1546 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,520,000	6.00
$10	672,000	22.50
$15	369,600	40.91
$20	369,600	40.91
$25	144,648	104.53
$30	40,068	377.36
$40	36,960	409.09
$50	62,790	240.80
$75	15,540	972.97
$100	30,198	500.70
$200	12,180	1,241.38
$500	3,234	4,675.32
$1,000	90	168,000.00
$2,000	27	560,000.00
$5,000	42	360,000.00
$20,000	16	945,000.00
$50,000	16	945,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1546 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1546, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301317
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 2, 2013

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Texas State Board of Examiners of Marriage and Family Therapists

Notice of Clarification

The Texas State Board of Examiners of Marriage and Family Therapists adopted revisions to 22 TAC Chapter 801, concerning Licensure and Regulation, in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1982). On page 1983, the rule preamble states: "Amended §801.41 adds the requirement that a licensee observe and comply with the code of ethics and standards of practice and that failure to do so is grounds for disciplinary action."

However, the proposed amendment was not adopted, and the preamble should have stated:

"Due to a public comment, the amendment to §801.41 that would have added requirements concerning the code of ethics and standards of practice was not adopted. The text of §801.41 has reverted to the existing language in the Texas Administrative Code."

TRD-201301343
Michael Puhl
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Filed: April 3, 2013

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Public Utility Commission of Texas

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 1, 2013, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Cap Rock Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41340.

The Application: On April 1, 2013, Cap Rock Telephone Cooperative, Inc. (Cap Rock or applicant) filed an application for revisions to its general exchange tariff to increase the monthly 1-Party Local Exchange Service rates for residential and business customers to equalize rates. Cap Rock is also requesting to discontinue charging residential and business customers which subscribe to the Optional One-Way Extended Local Calling Service (ELCS) and include this service to an expanded mandatory One-Way Toll-Free LATA Wide Local Calling Scope to all customers. Cap Rock proposed an effective date of June 1, 2013. The estimated annual revenue increase recognized by Cap Rock is $90,468 or 2.66% of its gross annual intrastate revenues. Cap Rock has 3,897 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 26, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to intervene or comment should contact the Public Utility Commission of Texas by April 26, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41340.

TRD-201301319
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 2, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 29, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to Public Utility Regulatory Act §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41332.

The Application: Valley Telephone Cooperative, Inc. (VTCI) seeks recovery of funds from the Texas universal service fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to VTCI. The petition requests that the Public Utility Commission of Texas (commission) restore $613,903.69 in funds from the TUSF to VTCI. In addition, VTCI requests approval of proposed rate changes in order to offset projected FUSF revenue impacts. VTCI stated it is an incumbent local exchange company (ILEC) with fewer than 31,000 access lines and is eligible to recover funds from the TUSF.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41332.

TRD-201301318
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 2, 2013

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Request for Comments

At the March 28, 2013 Open Meeting, the Public Utility Commission of Texas (commission) requested that interested parties provide comments in response to the following questions regarding a white paper by Prof. William Hogan and Electric Reliability Council of Texas (ERCOT) staff. The white paper entitled "Back Cast of Interim Solution B+ to Improve Real-Time Scarcity Pricing" was filed by ERCOT staff on March 22, 2013 in Project No. 40000, *Proceeding Relating to Resource Adequacy in the ERCOT Power Region.*

(1) How long will it take and what is the cost to implement Solution B+?;

(2) If Solution B+ is implemented, will the benefits of implementing full real-time co-optimization exceed the incremental costs of such implementation?;

(3) If Solution B+ is implemented, are bidding floors for ancillary services still needed to avoid price reversal? If so, should minimum bids for ancillary services be set according to a curve where minimum bids increase as reserve capacity is depleted, or should the minimum bid be set at a discrete level?; and

(4) With regard to minimum bids for ancillary services, should different ancillary services (such as on-line non-spin and off-line non-spin) be treated differently?

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Friday, May 31, 2013. All responses should reference Project No. 40000. The commission requests that comments be limited to a total of 20 pages.

If you have any questions, please contact Diana Leese at (512) 936-7204 or Jason Haas at (512) 936-7295.

TRD-201301342
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 3, 2013

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Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9043

CORRECTION TO AMENDMENT TO RULE OF EVIDENCE 902

ORDERED that:

1. The amendment to Rule of Evidence 902(10) promulgated by Order dated February 12, 2013, in Misc. Docket No. 13-9022, is corrected as follows, effective immediately.

2. **Rule 902. Self-Authentication**

. . .

(10) Business Records Accompanied by Affidavit.

. . .

(c) *Medical expenses affidavit.*

. . .

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo,* 356 S.W.3d 390 (Tex. 2011). The records attached to the affidavit must also meet the admissibility standard of *Haygood.* 356 S.W.3d at 399-400 ("[O]nly evidence of recoverable medical expenses is admissible at trial.").

3. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register.*

Dated: March 26, 2013

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

TRD-201301287

Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: March 27, 2013

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Hillsboro, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Hillsboro Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Hillsboro. TxDOT CSJ No.: 13HGHILLS. Scope: Provide engineering/design services to:

1. construct a hangar

2. construct a hangar access taxiway

The DBE goal for the current project is 11 percent. The TxDOT Project Manager is Eusebio Torres.

Future scope work items for engineering/design services within the next five years may include the following: construct additional Box Hangar; construct nested T-hangar; rehabilitate and mark runway, taxiway, and apron.

The City of Hillsboro reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at www.txdot.gov/inside-txdot/division/aviation/projects by selecting "Hillsboro Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

www.txdot.gov/inside-txdot/division/aviation/projects

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 21, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at www.txdot.gov/inside-txdot/division/aviation/projects under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201301330
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 2, 2013

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Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Cuero, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Cuero Cuero Municipal Airport. TxDOT CSJ No. 1313CUERO. Scope: Update to a previous feasibility study to examine the need for a new airport in the vicinity of the City of Cuero.

There is no HUB goal. TxDOT Project Manager is Michelle Hannah.

Future scope work items for professional services within the next five years may include the following: Site Selection, Airport Master Plan, and Environmental Assessment.

The City of Cuero reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

www.txdot.gov/inside-txdot/division/aviation/projects

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 7, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at www.txdot.gov/inside-txdot/division/aviation/projects. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201301331
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 2, 2013

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Upper Rio Grande Workforce Development Board

Request for Proposals - Audit Services

PY12-RFP-200-421

The Upper Rio Grande Workforce Development Board has released a Request for Proposals (RFP) for Audit Services to be provided in El Paso, Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties.

The authorized Workforce Board contact person for this procurement is Muriel Thomas-Borders, Contracts Administrator, Upper Rio Grande Workforce Development Board, 300 E. Main, Suite 800, El Paso, Texas 79901, Telephone: (915) 887-2220, Fax: (915) 351-6018 or via email at muriel.borders@urgjobs.org.

Packets may be picked up in person or requested in writing. The complete RFP is also available on the Workforce Board website at www.urgjobs.org under the Procurements section.

Schedule of Events

Release Date: April 2, 2013 at 12:00 p.m. MST

Respondents Conference: April 10, 2013 at 10:00 a.m. MST

Question Submission Deadline: April 17, 2013 at 12:00 p.m. MST

SUBMISSION DEADLINE: May 9, 2013 at 5:00 p.m. MST

TRD-201301315
Joseph G. Sapien
Program Administrator
Upper Rio Grande Workforce Development Board
Filed: April 2, 2013